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Development**

**Armenia
Rule of Law/
Anti-Corruption Assessment**

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Acknowledgements and Methodology

The Armenia Rule of Law/Anti-Corruption Assessment team consisted of Claudia Dumas, USAID/Washington (EE/DG)-Senior Rule of Law Advisor; Paula Goddard, USAID/Washington (EE/MT)-Anti-Corruption Expert Consultant; Michael Goldstein, Team Leader and Rule of Law Expert (ARD); and David Meyer, USAID/Washington (EE/MT)-Senior Anti-Corruption Advisor. The team is especially grateful to Bella Markaryan, USAID/Armenia-Democracy Specialist for her professional insight and logistical support (in addition to performing her regular duties)

The assessment team conducted the field assessment in Armenia from September 9 to September 27, 2002. In Yerevan the team met with GOAM officials, civil society organizations, business associations, USAID/Armenia and the Embassy team, USAID implementers and other international donors. In Vanadzor the team met with government officials, NGOs and media.

Meetings were arranged so that all members of the team could attend the most important interviews. On other occasions at least two team members attended interviews, except in rare cases where this was not possible. Team members were briefed regularly of the important matters covered in interviews attended by other team members.

Interviewees were asked to provide factual information available from their perspective that relates to rule of law and/or anti-corruption issues. Interviewees were also asked to give their opinions on the effectiveness of work and the amount of corruption in their area of focus and their basis for those opinions. Interviewees were asked to identify major problems and suggest solutions. They were also asked to identify possible friends and opponents of reforms and the possible factors that might motivate these players. They were asked to identify major constraints as well as factors that might facilitate needed reforms.

Before, during and after the field assessment in Armenia, the team reviewed the documents listed in Annex 1. The team held an exit briefing for USAID/Armenia before leaving the country, and subsequently briefed the Mission Director in Washington, DC.

Executive Summary

Introduction

Armenia has many of the institutions for establishing a society that adheres to the rule of law and can control corruption. However, these institutions do not function well as a system, which poses a significant development challenge for Armenia. This assessment focuses on the challenges and opportunities faced by Armenia in the areas of rule of law and anti-corruption to help inform the development of the new USAID/Armenia country strategy for FY 2004-2008. In addition to describing the current state of rule of law and corruption in Armenia, this document provides specific strategic approaches, with accompanying illustrative programmatic activities, in both arenas.

In the Armenian context, issues related to rule of law and anti-corruption are closely linked. Generally, like other former Soviet republics, the country experiences the legacy of Soviet communism. The distinction between public and private sectors is blurred, and an effective social contract between citizens and government has yet to be articulated, much less attained. Specifically, weak, underfunded and corrupt justice sector institutions remain incapable of holding the government and broader society accountable to the rule of law. In both the public and private sector, institutions supporting horizontal and vertical accountability are underdeveloped, preventing effective checks on corrupt practices. The problem in Armenia is this: corruption may be reined in through the establishment of effective institutions and practices, but such institutions and practices are difficult to develop in a context of pervasive corruption.

Thus, the development challenge for Armenia is to identify select areas for intervention that can assist Armenian public and private sector stakeholders in breaking the circumstances in which corruption flourishes in Armenia and in strengthening the justice sector's ability to apply law consistently, impartially and transparently. The accomplishments of Armenia and the donor community to date, including USAID, provide a platform for continued assistance. The assessment team recommends that USAID/Armenia include in its new country strategy the flexibility to initiate separate procurements for rule of law and anti-corruption, but procurements that reflect the symbiotic relationship between the two issues. The team also recommends that USAID/Armenia continue to integrate anti-corruption components across its development portfolio.

Rule of Law

Armenia's judicial system is characterized by a Constitution and statutory scheme that structurally provide executive branch influence over the judicial and legislative branches of government; an underfunded judiciary; a nontransparent and porous set of interactions in which judges, private lawyers and prosecutors engage in bribes and other practices to influence the outcome of cases; lingering telephone justice; an absence of published court decisions; and a new, complex and occasionally inconsistent statutory scheme. Nongovernmental organizations remain weak and citizens do not sufficiently know or understand their rights and responsibilities, or those of the government, under Armenian law. However, as discussed in this report, the

Armenian judicial system is generally perceived as performing its role better than four years ago and the judiciary and other stakeholders have started embarking on various positive reforms.

The assessment team recommends a strategic approach that focuses on the following overarching themes:

- increasing transparency and accountability within the institutions that advise on, interpret and apply the law; and
- supporting and strengthening informed constituencies whose advocacy and awareness of rights promotes the application of and adherence to legal standards.

This approach, in turn, can be implemented through carefully defined, selected and well-coordinated activities to provide:

- (1) institution building support for the judiciary, with an emphasis on approaches that support transparency and accountability in the judicial process;
- (2) institution building support for the bar; and
- (3) continued support for civil society's ability to "shine the light" on the performance of the judicial sector and the executive branch and increased public awareness.

Anti-Corruption

Corruption in Armenia is rampant and systemic—the team found a “captured” society within a “captured” state. Corruption permeates all levels of government and affects all segments of society. It is multifaceted and multidimensional and runs the spectrum from bribery and theft of state property to clientelism, political corruption and conflict of interest. While public opinion surveys suggest that many Armenians still believe corruption can be reduced, a significant portion of the population either is much more pessimistic and many simply leave.

The assessment team found that the causes of corruption in Armenia could be grouped into four categories, and articulated a series of recommendations for each category, as follows:

1. Public and private sector institutions operate in an environment of low transparency and accountability. The team recommends that USAID work to strengthen institutions of horizontal accountability (the judiciary, for example) and institutions of vertical accountability (civil society organizations, for example).
2. Perverse public-private relationships plague the public sector and public sector reforms are incomplete. Recommendations include support for “islands of integrity” within the public sector and the capacity for public policy analysis in the private sector.
3. There is no articulated common vision of Armenia's future competitive ‘niche’ in the global economy on which to base a consensus for reform. The assessment team recommends that USAID encourage new approaches to setting the agenda as it affects corruption, such as promoting a national dialog on what ought to emerge as Armenia's “competitive advantage” in the country's participation in the global marketplace. The team also noted the need to

identify reform “champions” from diverse groups of Armenians, from both the public and private sectors and the diaspora.

4. Donors can be part of the solution. The team strongly recommends that more effort to coordinate donor activities needs to be undertaken. USAID/Armenia must ensure that its interactions with Armenians set an example of transparency and accountability. Further, the USG should reach a consensus on a strategic approach across its diplomatic and aid missions and work to ease the operating conditions of its implementing development partners.

Conclusion

USAID/Armenia’s assistance programs can and should play a key role in helping Armenians take a longer view of their future and form a more unified national vision for the country’s development in the 21st century and beyond. US assistance must help to strengthen the relevant governmental and non-governmental institutions and foster an awareness among the Armenian public and its leadership of the important links among adhering to the rule of law, combating corruption and successful participation in the global economy. These objectives should figure prominently in the USAID/Armenia’s FY 2004-2008 Country Strategy and in USG/Armenia relations.

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Annexes

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Annex 2: List of Contacts

Acronyms

| | |
|-----------|---|
| ABA/CEELI | American Bar Association/Central and Eastern European Law Initiative |
| A/C | Anti-Corruption |
| ACAC | Albanian Coalition Against Corruption |
| ADF | Armenian Democratic Front |
| AED | Academy for Educational Development |
| AJRA | Republic of Armenia Judges Association |
| AUA | American University of Armenia |
| AYLA | Armenian Young Lawyers Association |
| BARA | Republic of Armenia Bar Association |
| CCC | Council of Court Chairs |
| CEC | Central Election Commission |
| CoE | Council of Europe |
| CPI | Corruption Perceptions Index |
| CRD | Center for Regional Development |
| CSDU | Civil Society Development Union |
| DCG | Donor Coordination Group |
| DG | Democracy and Governance |
| DOJ | Department of Justice |
| DSRO | USAID/Armenia's Democracy and Social Reform Office |
| E&E | Europe and Eurasia |
| EBRD | European Bank for Reconstruction and Development |
| EE/DG | USAID's Bureau for Eastern Europe/Office of Democracy and Governance |
| EE/MT | USAID's Bureau for Eastern Europe/Office of Market Transition |
| EREO | USAID/Armenia's Economic Reform and Energy Office |
| EU/TACIS | European Union/Technical Assistance Commonwealth of Independent States |
| FY | Fiscal Year |
| GOAM | Government of Armenia |
| GTZ | German Development Agency (<i>Gesellschaft für Technische Zusammenarbeit</i>) |
| IBU | International Bar Union |
| IFES | International Foundation for Election Assistance |
| IPC | Implementing Policy Change |
| IRIS | Center for Institutional Reform and the Informal Sector, University of Maryland |
| IUAA | International Union of Armenian Advocates |
| JTC | Judicial Training Center |
| MOJ | Ministry of Justice |
| MOU | Memorandum of Understanding |

| | |
|-----------|--|
| MSI | Management Systems International |
| NDI | National Democratic Institute |
| NGO | Nongovernmental Organization |
| N-K | Nagorno-Karabakh Conflict |
| NYU | New York University |
| OGI | Open Government Initiative |
| OSCE | Organization for Security and Cooperation in Europe |
| OSI | Open Society Institute |
| RFA | Request for Applications |
| RFP | Request for Proposals |
| ROL | Rule of Law |
| S/INL | State Department/Bureau of International Narcotics and Law Enforcement Affairs |
| SME | Small- and/or Medium-sized Enterprise |
| SOW | Statement of Work |
| T A A P E | Transparency – Accountability – Awareness – Prevention – Enforcement |
| TI | Transparency International |
| UC | University of California |
| UNDP | United Nations Development Program |
| USAID | United States Agency for International Development |
| USG | United States Government |
| YSU | Yerevan State University |

1.0 Introduction

Armenia's transition towards democratic governance suffers from deep-rooted problems in both the rule of law and corruption arenas. Although an array of justice sector institutions now exist, these various units cannot yet be said to constitute a well functioning system that provides for the impartial resolution of conflicts and which protects legal rights. Armenia's relatively new court structure, for instance, has shown good improvement over the last four years and the various elements making up the courts are now performing their functional roles more effectively than before. However, characteristics at the systemic level, and other factors discussed in this report, continue to impede the impartiality of the justice sector, which in turn is linked to the ongoing prevalence of corruption in the country. The courts continue to be heavily influenced politically by the executive branch and are vulnerable to corruption. This is largely because the current Constitution and statutory framework affords opportunities for executive influence. Judges continue to demonstrate the lingering effects of years of domination by the executive branch and procuracy, and there remains a certain lack of familiarity with new laws.

Armenia's corruption continues to flourish in an environment of low transparency and accountability in both public and private institutions. There is a lack of disclosure and access to reliable information, no tradition of openness in the public or private sectors, few checks and balances between branches of government or between society and the state, and too little separation between public officials and the private sector, especially in the country's economy. The abundance of fragmented oversight and control institutions has resulted in both weak horizontal and vertical accountability.

On the positive side, there is much to build upon. Judges increasingly are able to articulate and work with concepts related to the promotion of judicial independence and improved operation of the courts. Improved performance of the courts is generally reported. USAID's success with procurement reform and the business registration process has shown the effectiveness of working with key institutions on reforms. This demonstrates the importance of identifying and working with the key constituents for reform in an effort to overcome the vested interests that have benefited both financially and politically from a lack of transparency, pervasive conflicts of interests, and a politically influenced judiciary.

The challenge for donors is to build on the positive accomplishments over the last few years, while continuing to tackle the remaining obstacles to foster broader systemic development. This is best done by simultaneously working on both the supply and demand sides. On the supply side of good governance, institutional support to both the judiciary and lawyers represents positive targets of opportunity. On the demand side, there is a need to foster greater political will, which may be understood as both a higher level of government commitment to needed reforms, and the promotion of greater pressures from civil society for transparency and accountability, which might be pursued through enhanced public awareness and strengthening of key private sector institutions such as the bar.

This rule of law/anti-corruption assessment addresses each of these spheres of intervention in discrete yet interrelated fashions. While the tactics for addressing both of these areas differ, progress in the one is essential to development in the other. The strategic approach that is

recommended is based around a two-pronged conceptualization: increasing transparency and accountability and otherwise building effective institutions, and supporting informed constituencies. This approach is intended to narrow the wide de facto gap between the *de jure* legal framework that has improved over the last decade and laggard and ineffective implementation and enforcement. This document examines the constraints and obstacles in each subsector, then offers recommendations for further potential USAID interventions in supporting Armenian efforts to generate systemic progress.

Rule of Law Assistance in Armenia

2.0 Rule of Law Efforts to Date

2.1 Overview

The USAID Rule of Law Program in Armenia began in 1995. During the course of the program, development partners have included IRIS, ARD/Checchi, AMEX, Chemonics and the American Bar Association/Central and Eastern European Law Initiative (ABA/CEELI). The Chemonics contract, which combined Democracy and Social Reform Office (DSRO) ROL objectives with Economic Reform and Energy Office (EREO) commercial law objectives, was the most recent of the contracts, ending in August 2002. The ABA/CEELI program (currently structured in the form of a cooperative agreement) is ongoing and dates back to the ROL Program's inception.

USAID has been active in providing support for a wide variety of ROL activities. The most significant of these includes assistance to the drafting, adoption and implementation of legislation, support for the development of the judiciary, and support for legal education.

In the field of legislative assistance, USAID support was largely responsible for the drafting and adoption of the Civil Code (enacted in 1998). It also contributed to the drafting and adoption of the Law on the Judiciary, the Law on the Status of Judges, the Criminal Procedure Code, the Law on Procurement and the Law on the Registration of Legal Entities. In addition, USAID provided assistance to drafting a new Criminal Code (adoption pending), a new Administrative Procedure Code (stalled due to absence of executive branch interest and now pending a restart with the German Development Agency [GTZ]), and a new Law on Advocates (pending). USAID also assisted in the drafting the proposed constitutional amendments (adoption process pending) and the recently adopted Code of Judicial Ethics.

Assistance to the judiciary has included episodic assistance to the Council of Court Chairs, which is the judicial body statutorily responsible for court administration and judicial education. The assistance has focused on court administration issues (Chemonics and AMEX); assistance to the Judicial Training Center (training of trainers at the National Judicial College in Nevada—AMEX and ABA/CEELI); publication of, and a Web site for, Cassation Court decisions (ABA/CEELI and Chemonics); and assistance with the Code of Judicial Ethics (ABA/CEELI).

ABA/CEELI has been working with the Armenian Judges Association, the three unions of advocates (two of which recently merged), BARA (an organization of lawyers not limited to “advocates”), and the Armenian Young Lawyers Association (AYLA).

Both the Chemonics and ABA/CEELI programs included provisions for awarding small targeted grants to Armenian NGOs. One example is a grant awarded by Chemonics to the Association of Investigative Journalists to investigate the workings of the Armenian courts in particular cases.

Most USAID support for legal education has been directed toward the Law School of Yerevan State University (YSU). This has included equipment for an extensive computer laboratory in the law library; long-term training stays for young faculty at Boalt Hall Law School (University of California [UC]/Berkeley); computer research training at New York University (NYU) Law

School; development of new course materials and interactive teaching methods; and development of practical skills courses.

The World Bank Judicial Reform Program also is contributing to ROL reform in Armenia, with activities in six broad component areas:

- (1) strengthening the institutional capacity of the judiciary (\$2.63 million);
- (2) rehabilitating court infrastructure (\$6.46 million);
- (3) training judge and court personnel (\$0.53 million);
- (4) improving the enforcement of court decisions (\$0.59 million);
- (5) disseminating legal information (\$0.69 million); and
- (6) improving public awareness and education (\$0.75 million).

2.2 Findings

2.2.1. Accomplishments

- a. *Recent USAID assistance to drafting and implementation of new laws has produced successful results.* Enactment and initial steps toward implementation of the Law on Government Procurement and the Law on Registration of Legal Entities have been accomplished, in large part, as the result of USAID providing focused assistance to, and working closely with, the implementing executive agency.
- b. *USAID assistance to the constitutional process has improved Armenian understanding of constitutional issues.* USAID, together with the Council of Europe (CoE), has consistently emphasized to the Armenian government the shortcomings of the current Constitution, particularly with regard to the independence of the judiciary, separation of powers between the branches of government, and the need for meaningful judicial review of laws and government acts. USAID has provided continuing assistance to the drafting of proposed Constitutional amendments and has transferred concepts and approaches to key players in the Armenian judiciary. The assessment team's discussions with the Presiding Judges of the Constitutional Court, the Cassation Court and with other Armenian jurists conveyed the positive impact of their sustained engagement with Professor Herman Schwartz and other experts provided by USAID.
- c. *USAID-supported NGO forums on proposed constitutional amendments have helped increase transparency and public participation.* The Unions of Advocates, AYLA, and other NGOs funded by USAID have taken the lead in sponsoring discussion groups and public forums on the proposed constitutional amendments at a time when the Armenian government has been discouraging public discussion of reform.
- d. *USAID support for publication of judicial decisions has helped increase transparency.* During a study tour in the US, Chief Justice Danilyan became a supporter of published court decisions. Accordingly, USAID (Chemonics) arranged for the publication of nine volumes of Cassation Court decisions and one volume of Economic Court decisions. USAID (ABA/CEELI) established a Web site that accesses Armenian court decisions. Publication of additional decisions of various courts is desirable to promote greater transparency and

accountability, and provides needed information to Armenian lawyers and citizens. This initial publication represents an important first step.

- e. *USAID efforts (ABA/CEELI) contributed significantly to the drafting and adoption of the new Code of Judicial Ethics.* The Code, while a positive step, is characterized by broadly worded general principles. It needs further elaboration and the development of implementation mechanisms to be effective. ABA/CEELI 's recommendations for more specificity in the provisions of the Code were not followed in the final draft. In particular, the draft code omits specific reference to concrete areas that constitute a conflict of interest. ABA/CEELI has also been providing some training on judicial ethics.

2.2.2 Less Successful Activities

- a. *Assistance to Yerevan State University Law School has not achieved the intended results.* Although the YSU law school has received large amounts of technical and material assistance, results so far have been disappointing. USAID assistance has provided the basis for developing YSU into a modern law school, but the school has not taken full advantage of the opportunity. The school administration has not been able to fully utilize the equipment and technical assistance to reform curriculum and teaching methodology sufficiently to produce the qualified legal professionals that Armenia needs. There are some new courses, particularly at the graduate level, and there is a small amount of interactive teaching. After a lag of several years, it seems the computer equipment is now being widely used for training. It is commonly believed that there is a high level of corruption at YSU Law School in both admission and grading practices.
- b. *The Judges Association of Armenia remains weak and passive.* The Judges Association of Armenia (AJRA) remains a small and passive organization despite persistent and long-term ABA/CEELI assistance.
- c. *Drafting assistance to the Administrative Procedures Law failed to produce legislation.* There were many misunderstandings and little progress following the replacement of the initial drafting group (that had attended the USAID-sponsored administrative law seminar in The Hague) with an entirely new team. It proved difficult to support this legislative reform in the absence of a strong constituency for the reform.

2.2.3 Ongoing

Initial efforts to support court administration and case management have started an important task. The creation of “islands of autonomy” in the judiciary by 1998 legislation (some court administration activities, some judicial education responsibility) has created “islands of assistance opportunities” for the donor community (publication of court decisions, *ad hoc* court administration assistance). Court administration and case management are critical “islands” in the judicial system that are central to resolving issues related to transparency, accountability, efficiency, integrity and financial autonomy. This *ad hoc* assistance provided to date has not had a measurable impact on court administration and case management practices. Real improvement will require assistance that is substantial, strategically directed, continuous and implemented through close engagement and good mutual relations between USAID and the Armenian partner

(Council of Court Chairs). Good coordination with the World Bank Judicial Reform Program and good Armenian management of its assistance requests will be important to ensure maximum benefit to the Armenian courts and avoid duplicative and inconsistent assistance in this area.

2.3 Lessons

- a. *Drafting new legislation is an important activity that has generally proved feasible. However, implementing new legislation is an equally important activity that has often proved to be difficult.* Implementation of legislation is closely related to institution building. Much good legislation has been adopted but not yet fully implemented. Implementation will require greater attention and more particularized focus on systemic capacity to achieve results. Amendment of laws to promote their simplification and consistency may also support a more consistent application of laws and better predictability for Armenian and foreign investors and the Armenian public at large. Depending on the particular law, close and sustained collaboration with an executive agency genuinely interested in implementation is often required to achieve effective results. Effective courts and a competent legal profession are ultimately indispensable to the implementation of laws.
- b. *Implementing agreements that contain programming supporting different Strategic Objectives run the risk of being usurped by one office in response to perceived priorities and targets of opportunity.* The budget allocations for respective strategic assistance areas should be adhered to in order to support consistent programming and engagement with Armenian counterparts. In the case of the Chemonics contract, contractor staffing and activities evolved to a point where market reform/economic growth assistance purportedly accounted for about two-thirds of the overall contract, although DSRO ROL reportedly funded two-thirds of the contract budget. This precluded a focused engagement with certain ROL parties and resulted in some anticipated priorities, including court administration assistance, not being addressed. It also appears that EREO additions of activities in response to targets of opportunities also caused disruption to the EREO-planned activities. For example, funds were insufficient to complete assistance in implementing the business registration law.
- c. *In Armenia, as elsewhere, leadership is of particular importance in determining the success or failure of a reform effort.* The successful drafting efforts of the Civil Code, Law on Government Procurement, and Law on Registration of Legal Entities were, in large part, due the commitment and competence of the leadership provided by Armenians. Similarly, the absence of a committed and competent Armenian leadership to guide the drafting of the Administrative Procedure Law had much to do with the failure of that effort. The tenor and results of work with institutions, including the Cassation Court, the Constitutional Court, the Ministry of Justice, the YSU Law School and others, tend to be defined by the priorities, competence, and work style of the institution's leadership.

3.0 Analysis of Obstacles to Effective Rule of Law in Armenia

The team identified nine important clusters of issues related to legal reform in Armenia. A discussion of each of these clusters follows.

3.1 Amendments to the Constitution

The current Constitution of Armenia has long been recognized as a major constraint to the development of an independent judiciary and genuine separation of powers among the branches of government. Accordingly, the Constitution has also been a major impediment to the development of a judicial branch capable of holding the government accountable to the law.

As part of its accession to the Council of Europe, Armenia agreed to amend its Constitution in part to provide for a more independent judiciary. The process of drafting and adopting these amendments, begun in 1999, has been much delayed both by tragic political events in Armenia and by a lack of enthusiasm on the part of the executive branch, which is hesitant about seeing its power diluted—a lack of political will, in other words. In 2002 the National Assembly approved a set of draft amendments proposed by the president. A referendum will be required for adoption, but no date has been set for the referendum. A set of amendments proposed by the opposition was rejected by the National Assembly and will not be included in any referendum. There is talk that the referendum on the proposed amendments may be held together with the elections for the National Assembly set for May 2003, but this is not certain. The Ministry of Justice has created a working group that is considering further modification of the president's draft amendments. The Venice Commission of the Council of Europe has reviewed the draft amendments and has expressed its approval of the draft amendments as satisfactory.

3.2 Justice Sector Institutions

The structure of Armenia's court system is relatively new, having largely been established by legislation subordinate to the Constitution that came into force in 1998 and 1999 (e.g., Law on the Judicial System, Law on the Status of Judges). The Economic Court, which has first instance jurisdiction over economic cases and whose decisions may be appealed only to the Court of Cassation, was established even more recently.

Courts reportedly do not issue decisions in accordance with the law, largely as a result of a number of factors, including:

- (1) influence by the executive branch;
- (2) corruption;
- (3) no internalized sense of independent decision making by judges, influenced by years of domination by the executive branch and the procuracy; and
- (4) absence of familiarity with new laws.

The influence of the executive branch may be attributed to various sources, including 'telephone justice,' pressure from the prosecutor's office, and decisions made in order to avoid the displeasure of the executive branch. Executive branch influence is structurally attributable to the

Constitution and various laws regarding the judiciary, in which the executive branch—particularly the Minister of Justice—has a critical voice regarding the appointment, promotion, disciplining and removal of judges.

Surveys and interviews suggest that judges, prosecutors and private lawyers all contribute to corruption, particularly bribes. Low judicial salaries and near nonexistent appropriations for the operation of the courts are reportedly a factor in judges requesting and accepting bribes. Bribery extends to legal education, including the YSU Law School where students reportedly pay for admission and passing grades. Litigants may offer bribes to secure a particular outcome as a response to inconsistent and ambiguous laws, and hence unpredictable rulings, including in commercial matters.

Legal standards are not easily accessible and court operations are not transparent. Decisions involving a specific case are generally available to the parties of that case. There is no systematized approach for what constitutes the record of the case (such as evidentiary documents) and individuals who are not parties have no well recognized right to obtain and review the record.

Private lawyers lack knowledge of new laws and are held in low regard. This includes advocates, who are the only private lawyers allowed to appear in criminal cases.

Despite these significant weaknesses, there was a consensus among those interviewed that the courts are performing their roles better than four years ago in adjudicating cases in accordance with the law. Citizens are using the courts to challenge some executive branch decisions or inaction and are winning, including cases in tax matters and at the local level. There are, reportedly, now some talented advocates who have made judges take notice. Prosecutorial influence over judicial decisions remains a problem, but reportedly has decreased somewhat following the adoption of the new Criminal Procedure Code, which transferred to judges the authority to issue search and arrest warrants. Interviews also suggested that judges sometimes refuse to rule as requested when they receive phone calls made on behalf of ministry officials. However, judges continue to experience pressure from the executive branch, particularly in politicized cases. They fear retaliation in such cases because of the president's ultimate control over judicial terminations.

Corruption is a major problem in Armenian courts. The consensus among contacts interviewed by the assessment team, whether inside or outside of the justice sector, indicates that there is a high level of corruption throughout the judicial sector, especially in the courts. It should be noted, however, that many, perhaps most, observers note that while still extremely corrupt, the courts are somewhat less corrupt than was the case four or five years ago.

Interviewees cited several factors contributing to widespread corruption in the courts, including:

- (1) the pervasive nature of corruption throughout Armenian society and government that creates a climate that encourages corruption;
- (2) ambiguous legislation providing opportunities for corruption;
- (3) low transparency in the judicial decision process;

- (4) lack of knowledge of the law (particularly new laws) among the judicial corps;
- (5) low judicial salaries, especially in relation to the amounts sometimes in dispute in pending cases;
- (6) poor court administration and case management practices causing delays and gaps that permit corrupt practices; and
- (7) inadequate court financing that forces judges to pay many expenses from bribes.

Advocates, prosecutors and parties also play a role in facilitating judicial corruption. The procuracy is usually cited in surveys as highly corrupt. Advocates sometimes define their role as facilitating payments to judges in order to resolve cases. There is much finger-pointing among judges, advocates and prosecutors over the issue of corruption in the judiciary. The team found it difficult to quantify the extent of the corruption, but it clearly is a major issue facing the justice sector.

3.3 Judicial Independence

The current Constitution provides the executive branch with powerful structural levers that enable it to dominate the judiciary and inhibit the development of a genuinely independent judicial branch.

The Constitution gives the president, acting on recommendations of the Council of Justice, the power to appoint and remove judges. The Council of Justice is dominated by executive branch appointments and accorded constitutional authority to discipline judges.

The Constitution provides that the president serves as the chair of the Council of Justice. The vice chairs are the Minister of Justice and the general procurator, both of whom are appointed by the president. The remaining membership of the Council of Justice consists fourteen persons appointed by the president and three appointed by the general assembly of judges.

The judicial appointment process in the Council of Justice consists of two stages: a written examination, followed by an interview. In current practice, the Minister of Justice supervises both the examination and interview stages. Approximately 95% of the applicants pass the written examination. The critical stage, by all reports, is the interview process, which takes place with a low degree of transparency. There are no established criteria for conducting interviews or evaluating candidates. In practice, the length of interviews varies a great deal. The ranking of results based on the written examination seems to play little or no role in determining which candidates for the judiciary are recommended to the president for appointment. It was the dominant consensus of the assessment team's respondents that the interviews of judicial candidates and selection for nomination appeared to be subjective and controlled by the Minister of Justice. Contacts interviewed by the assessment team generally agreed that the newly selected judges were basically qualified, but that political factors influenced the selection process.

The procedures for disciplining and removing judges are initiated by the Minister of Justice. The Council of Justice decides matters of judicial discipline and makes recommendations to the president in cases involving removal of a judge. Only the president can remove a judge.

The contacts interviewed by the assessment team, including several judges, reported that executive branch authority to discipline and remove judges influenced how judges decided cases, particularly those cases in which the executive branch was known to have an interest in the result.

The proposed constitutional amendments referenced above have the potential to establish a more independent judiciary, mainly by changing the composition of the Council of Justice. As noted above, the current Council of Justice is chaired by the president and includes the Minister of Justice and the General Procurator as vice-chairs and fourteen presidential appointees and only three judicial appointees. Under the proposed amendments, the Council of Justice would consist of ten members, seven elected by the general meeting of judges and three appointed by the president. The president, Minister of Justice and General Procurator would no longer be members of the Council of Justice. The Council of Justice would continue to play its current role in the nomination and disciplining of judges, but its recommendations for removal of a judge would now be submitted to the Constitutional Court rather than to the president for consideration and possible action.

Although the Minister of Justice will no longer be a member of the Council of Justice, the version of the government-proposed amendments reviewed by the assessment team provides that the Council of Justice present proposals for judicial candidates and promotions to the President of Armenia, and subject judges to disciplinary proceedings upon the recommendation of the Minister of Justice. Consequently, the manner in which the constitutional amendments are ultimately implemented—including the extent to which the Council of Justice will be able to initiate recommendations rather than react to the Ministry of Justice’s specifications and whether subordinate legislation will establish clear standards for judicial promotions, discipline and other matters—will be of critical importance in the judiciary realizing greater independence from the executive branch.

The proposed amendments would also widen the scope of judicial review of laws and government actions. Although the Constitutional Court has the authority to review legislation and government actions for compliance with the Constitution, it has heard very few cases because only the executive branch and the National Assembly have the standing to bring cases to the Constitutional Court on these matters. The proposed amendments would extend to aggrieved individuals and to courts the right to bring cases to the Constitutional Court. In this manner, the proposed amendments would establish an adequate constitutional framework for judicial review of laws and government action.

3.4 Court Administration Practices

The Council of Court Chairs (CCC), a body consisting of the chairs of each court plus the chairs of each chamber of the Cassation Court, was created by legislation enacted in 1998 and began functioning in its current structure in 1999. The Chief Judge of the Cassation Court serves as the Chair of the CCC. By law the CCC has responsibility for specified functions, the most important of which include:

- (1) court administration,

- (2) budget and finance,
- (3) in-service judicial education, and
- (4) formulation and approval of the Code of Judicial Ethics.

Case management practices in Armenia remain weak. Although the CCC has statutory authority to establish procedures for judicial assignments, the CCC has not established these procedures. Transparent procedures for assignment of cases that use random or other “blind” principles are generally considered an important element in limiting corruption opportunities. The current absence of mandated procedures permits court chairs to assign cases to particular judges at their discretion. Also, there are no uniform or transparent standards for compiling, maintaining, and providing access to a case record. While courts do not seem to have accumulated significant backlogs, observers and participants report that cases progress slowly and with frequent delays, which force parties and attorneys to spend significant time and effort forcing the process along to a resolution. These delays present obvious opportunities for corruption.

Court financial and budget operations are also weak. While the CCC plays a role in compiling budget requests from the various courts, it does not play a similar central role in disbursing court funds. Rather, the Ministry of Finance transmits to each court funds to pay salaries and pays other court expenses directly to the provider. For example, the presiding judge of the court in Vanadzor noted that the Ministry of Finance pays the utility directly for the court’s electricity. One presiding judge noted that the Ministry of Finance now plays the role that the Ministry of Justice played before the establishment of the CCC. This presiding judge observed that it would be better if disbursements went through a centralized judicial department subordinate to the CCC. As the CCC and judiciary receive larger funds in the future, appropriate processes, including both budgeting and auditing (or other inspector functions) will be necessary to ensure that funds are expended in accordance with budgets generated by the CCC and for their intended purposes.

A Judicial Training Institute exists under the CCC. However, this institute has been slow to assume a leadership role in providing training to the judiciary, and assistance providers (including Chemonics) have been frustrated in their early engagements with the Judicial Training Institute. EU TACIS in fact cancelled its assistance project for the Judicial Training Institute following a dispute between the two sides. The World Bank project anticipates some potential future engagement with the Judicial Training Institute.

The issue of judicial ethics touches upon the porous boundaries between the public and private sectors. There is currently no Code of Ethics applicable to prosecutors. In addition, the civil service law, including any conflict of interest provisions, does not apply to the judicial branch, including clerks and other lay persons who work in the court system.

3.5 Commercial, Taxation and Bankruptcy Cases

The Economic Court of Armenia was established in 2001. The court has jurisdiction in economic disputes (disputes between commercial entities) and in certain matters including bankruptcy and taxation matters. The Economic Court functions as a court of first instance in those areas where it has jurisdiction. Appeals from the Economic Court go directly to the Cassation Court without

first being heard in the Court of Appeals. The judges of the Economic Court appear to understand relevant law, although they complain of complexities and inconsistencies in Armenia's legislation, and the court is well equipped, including computers. The Economic Court is a specialized court within the system of courts of general jurisdiction of Armenia.

3.6 Private Lawyers

Current Armenian law allows only “advocates” to represent defendants in criminal cases. However, anyone is permitted to represent parties in civil cases and to appear in court on behalf of clients in civil cases. This right to represent clients extends to non-lawyers and persons without any legal education. An “advocate” must have a higher legal education, pass a state-qualifying examination, and be admitted into membership into one of the existing advocates' unions. (There used to be three unions, but two of them recently merged). Current legislation provides procedures for the establishment of advocates unions, which are registered with the Cassation Court.

A draft law on advocacy, prepared by the International Advocates Union (one of the three then-existing unions) with assistance from ABA/CEELI would limit private practice of law to licensed advocates, and provide for the establishment of a single advocates union that would administer a single admission examination and administer a single Code of Ethics applicable to all advocates. The draft law is currently stalled, primarily because the executive branch would prefer to continue the practice of permitting the formation of multiple unions of advocates.

A major problem with the draft law as currently written stems from the absence of accountability of the proposed single advocates union. Although the union would be registered with the Cassation Court, the union would devise, conduct and implement admission standards, including examination and character requirements, as well as discipline standards without supervision by the Cassation Court (or other judicial or governmental institutions) and without procedures for review by the Cassation Court or some other court.

Current discipline procedures are especially weak because there is nothing to prevent an advocate disciplined by or expelled from one advocates union from joining the other. This practice has, on occasion, occurred.

Currently advocates are held in low repute. Their knowledge of the law is generally inadequate and they tend to lack the advocacy skills necessary to provide competent legal representation in courts.

3.7 Administration of Justice in Criminal Cases

3.7.1 Prosecutors

The procuracy (state prosecutor's office) is currently in transition from a Soviet-style institution to one consistent with European practice. The main functions of the procuracy include conducting and supervising criminal investigations, prosecuting persons accused of crimes in court and representing the government in legal cases when requested.

Recent legislation has transferred certain functions, including issuing search and arrest warrants, from the procuracy to the courts. The CoE requires that a prosecutor's office be established either within the executive branch or the judicial branch (European practice includes both approaches). Armenia has not yet made its choice of which branch of government should ultimately include the procuracy. The CoE is not pressing Armenia on the question, but would like Armenia to make a decision some time in the near future. Presently there is no code of ethics that applies to prosecutors.

Reportedly there are many cases in which force is used to obtain confessions. There are allegations of torture. Most instances of force and torture reportedly occur during the initial detention of a suspect in order to obtain material necessary to obtain court approval of an arrest.

USAID/Armenia is not working in the area of criminal law reform, nor providing assistance to prosecutors or investigators. Accordingly, USAID/Armenia assistance is not providing the institution building and other technical assistance that might reduce corruption in these bodies; establish accountable systems and practices to reduce detention and other abuses by prosecutors and investigators; adjust specific rights, responsibilities and interactions among judges, prosecutors and inspectors; or support increased ability to investigate and prosecute criminal corruption. The State Department Bureau of International Narcotics and Law Enforcement Affairs (S/INL) and a DOJ/CEELI criminal law liaison funded by the US Department of Justice are working on some areas of criminal law assistance. However, the USG is not providing systemic and strategic assistance to reform the procuracy, interior ministry and police. This failure could limit the impact of USAID assistance.

3.7.2 Courts

Criminal trials in Armenian courts reportedly almost always result in convictions of the defendant. This is consistent with the situation in other former Soviet republics. In Russia, for example, the conviction rate in trials before a judge is also about 99% while the conviction rate before juries is approximately 80%. European countries with criminal trials before a professional judiciary maintain fairness through a strong professional ethic implemented through training, peer transmission and a professional advancement process that rewards application of professional judicial standards in decision making. The Armenian courts do not yet appear to have reached these standards.

3.8 Legal Education

Approximately half of Armenia's law graduates come from YSU, with the remainder graduating from private schools. In the last few years, six private law schools, including all the major ones, have received accreditation. Under the recently reformed system, a bachelors' degree in law is awarded after four years of study with a master's provided after the fifth year. The same basic course of study is provided at both YSU and the private law schools, often making use of many of the same instructors. A graduate program at the American University of Armenia offers instruction in English to approximately 10 to 15 students per class. Although there has been some improvement in legal education, Armenian law schools continue to lag in producing graduates who can rigorously apply legal standards. Teaching continues to rely heavily on a lecture format. Outdated courses required by the Ministry of Education prevent new courses

from being developed and offered. Clinical education offered by YSU does not provide undergraduate students with trial experience. Examinations continue to be on an oral basis rather than randomly graded written examinations (creating opportunities for corruption in lieu of a demonstrated competency in a subject). Rumored corruption at the YSU law school, both in admissions and grading, has the potential not only to diminish the quality of its graduates but also to increase a culture of legal impunity and popular distrust of the legal system. Several of Armenia's newer accredited private law schools reportedly are graduating students as competent as those graduating from YSU, and may be promising avenues for any future assistance in legal education to promote competition based on merits and reduce YSU law school's dominant role.

3.9 Public Awareness and Access

At present, the Armenian public has a low level of understanding of the law and of their rights under the law. Armenia has no effective system for distributing laws and legal education to the public, and in many cases even to legal professionals.

There are some legal clinics associated with different bar associations and YSU that, in certain cases, make legal consultation and legal advice available to the public. ABA/CEELI, through the AYLA, and Open Society Institute (OSI) through the Bar Association of the Republic of Armenia (BARA-an association of lawyers not limited to advocates), provide support for these clinics.

As a rule, Armenian journalists do not have sufficient knowledge and understanding of the law and are not equipped to inform the public. There are, however, some investigative journalists who are effective in critically presenting operations of the justice sector in the print media.

4.0 Strategic Approach and Illustrative Programs in Rule of Law

The 2002 draft Democracy and Governance (DG) Assessment of Armenia recommended that USAID support ROL programming so that formal legal and constitutional changes can create practical incentives for behavior that will help consolidate DG reforms generally. The assessment team found that while many of the key justice sector institutions exist in Armenia, they do not function in an integrated way and as a system. The overall strategic approach for ROL recommended by the team focuses on two main themes:

- (1) increasing transparency and accountability within the institutions that advise on, interpret and apply the law; and
- (2) supporting and strengthening informed constituencies whose advocacy and awareness of rights promotes the application of and adherence to legal standards.

A third, related, theme is enhancing the ability of the judiciary to operate more competently and more independently from the executive branch.

In this section of the report, we first outline the key constraints to reform, as well as Armenia's accession to the CoE, in which Armenia agreed to constitutional amendments to the judiciary. This is followed by a list of the three key strategic directions recommended by the assessment team, with accompanying illustrative activities. The three strategic directions are:

- (1) institution building support for the judiciary, with an emphasis on approaches that support transparency and accountability in the judicial process;
- (2) institution building support for the advocacy system; and
- (3) continued support for civil society's ability to "shine the light" on the performance of the judicial sector, the executive branch and other public outreach activities.

4.1 Key Constraints

4.1.1 Lack of Financial Resources

Low resources for the judiciary, including judicial salaries, contribute to rent seeking by judges. Raising judicial salaries is necessary, but in the absence of other reforms, insufficient to reduce corruption.

4.1.2 Low Transparency

Absence of transparency in court operations and case management limits the ability to hold courts and advocates accountable.

4.1.3 Executive Branch Interference with Judicial Independence

The executive branch holds key levers for influencing the judiciary. These levers have been an important constraint to development of an independent judiciary. The executive branch has used these levers to influence the judiciary and resists changes that would provide for more judicial

independence as well as other reforms that would increase transparency within the executive branch.

4.2 Accession to the Council of Europe

Armenia's accession to the CoE included Armenia's agreement to comply with CoE conditions that accompanied accession. These conditions included agreement to amend the Constitution to establish an independent judiciary, a balance of powers between the branches of government and enhanced protections of human rights. The proposed constitutional amendments are part of the Armenian government's efforts to demonstrate compliance with CoE conditions.

The Government of Armenia (GOAM) places great value on the CoE accession process. It would like to be accepted as part of the European Community nations, particularly in view of its isolation from Azerbaijan and Turkey arising from the Karabakh question. Moreover, the Armenian government particularly values such tacit support it may receive from Europe on the Karabakh question.

In this context, CoE conditions encourage Armenia to make and accelerate reforms. The effectiveness of this lever depends on the extent to which the CoE is willing to insist on Armenia's compliance with the conditions to which it has agreed.

4.3 Strategic Focus

Each of the three strategic prongs are described briefly below and are illustrated by a series of indicative programmatic activities for review by USAID/Armenia. The representative programmatic activities illustrate how the strategic recommendations can be operationalized. They include examples of activities that are too broad for a single set of Mission activities, but provide the basis for programs that could be coordinated with other donors or further divided into elements that could be implemented individually. Aspects of court administration and case management assistance should be implemented in close coordination with the World Bank Judicial Reform Program, which includes court administration and case management assistance. The World Bank program, while substantial, does not have adequate funding to perform all needed assistance to court administration and case management.

4.3.1 Institution Building Support for the Judiciary

The judicial branch, including the CCC, should be provided support that enables the judiciary to carry out its role, with an emphasis on approaches that support transparency and accountability in the judicial process.

Illustrative Programmatic Activities

- a. *Introductory note – implementation of individual laws.* Broadly and programmatically speaking, laws that USAID/Armenia may target for implementation assistance are those that relate to the operation of the judiciary, judicial system or lawyers (including, through assisting the judiciary and lawyers, to develop regulations and operating approaches to implement those laws); and substantive laws, such as a freedom of information law.

However, identification of individual substantive laws should not be scattershot or overwhelm a focus on how the applicable institutions themselves (courts, lawyers, civil society organizations) are functioning and contributing to a system supporting the transparent and impartial application of law.

Methods of assisting implementation will vary, depending on such factors as whether executive branch organs must first establish processes and rules to come into compliance, as is the case in a freedom of information law. In any event, assistance should include strong public outreach by advocates and/or civil society groups and not just training for judges.

Development of new laws and significant amendments should be preceded by the development of a concept paper with counterparts. In addition, any legislative assistance should be provided in a manner that supports a more transparent and participatory legislative process, including making drafts available and engaging the concerns of citizens, civil society organizations, business and other governmental stakeholders. Approaches, laws and implementing regulations should also be reviewed from a “corruption proofing” vantage point, which explicitly examines whether new regimes create opportunities for corruption.

- b. *Support for laws and amendments to laws that are specifically intended to reduce corruption in the judicial sector.* Lists of various reforms are set forth in the Rule of Law assessment conducted by MSI (May 5, 2000) and the Draft Anti-Corruption Strategy. These also include assistance to implement the Code of Judicial Conduct, which is discussed separately below. Some of these reforms may involve an extended preparation and review process, such as item 3.7.2.3 in the Draft Anti-Corruption Strategy, which calls for “reviewing civil and criminal procedures and the case management and assignment among judges, in order to identify procedural rules that contribute toward corruption or unfair practices.”

Reforms that may be subject to a less intensive review process prior to formulating the necessary amendments and that have the potential to increase transparency and accountability and to reduce corruption include:

- (1) abolishing *ex parte* meetings by the judge with the parties to the case and considering such meetings a violation of judicial ethics (draft Anti-Corruption Strategy 3.7.2.4);
- (2) requiring publication of judicial decisions (draft Anti-Corruption Strategy 3.7.2.1) and that judges include in their decisions the findings of fact and conclusions of law that support their decisions;¹
- (3) providing the public with the right to obtain judicial decisions and the record of the case; and
- (4) establishing random case assignments, in place of case assignments being made by the chairs of the courts.²

- c. *Support for laws that support consolidating democratic reforms.* These would include the following:

¹ Armenian law reportedly specifies the information judges must set forth in their opinions in different types of cases. However, the team understands that the requirements of these provisions (and the manner in which judges apply them) are reasonably perfunctory and do not necessarily extend to findings of fact and conclusions of law.

² Reportedly, in courts of the first instance in Yerevan, judges now hear cases based on certain geographic allocations rather than completely by direct assignment by the court chairman.

- (1) Election Code (this is particularly relevant in anticipation of the upcoming set of elections—the Chairman of the Court of Cassation stated that training is planned for trial court judges in October 2002);
 - (2) Freedom of Information Act (this would require work with targeted executive branch ministries—presently in draft);
 - (3) Administrative Procedure Code (GTZ is working on a draft, which may take several years to enact. USAID/Armenia would want to ensure there is a strong interest in targeted ministries in receiving assistance to implement this law); and
 - (4) Privacy Protection (presently in draft).
- d. *Support for implementing laws that define the balance of roles and responsibilities among judges, prosecutors and investigators.*
- e. *Support for constitutional reform.* The proposed constitutional amendments have the potential to advance judicial independence, separation of powers and holding the government accountable under the law. While a date has not been set for the referendum, there is talk that it might be held in conjunction with the National Assembly elections in May 2003. This would probably be too soon to include in a new ROL program, however it would be feasible for existing programs to conduct activities in support of the constitutional referendum that could be folded into the “quick start” activity described below. These activities could include public forums and discussions on the constitutional amendments, voter education, “get out the vote” activity and so on. In addition to the ongoing ABA/CEELI ROL program with its Armenian partners, other implementers working on election questions—International Foundation for Election Assistance (IFES), National Democratic Institute (NDI), World Learning, Academy for Educational Development (AED), Internews, Promedia and Urban Institute—could include constitutional referendum issues in their election activity.
- f. *Case management assistance.* This is a broad and complex area that exceeds what any one donor can do and requires intensive attention to detail, follow-up and, in some instances, iterative adjustments to reflect changes to procedural codes. In Armenian courts, basic functions necessary to the efficient and transparent administration of justice are inadequate and rudimentary. A holdover Soviet practice of subjective summaries of testimony instead of transcripts or recordings distorts court process. There are no clear standards defining what constitutes the official record of a case (such as initial pleadings, recorded testimony and documentary evidence). Case files, records and decisions are available only to parties of the case.

The absence of transparent and efficient case management is a major impediment to judicial accountability and integrity. Representative aspects to support transparent and efficient case management include:

- (1) Assist review of applicable legislation (including the Civil and Criminal Procedure Codes) to identify changes and additions to legislation required to adequately record testimony, constitute and preserve case files, and make case records available to public inspection.
- (2) Assist review of court rules and practices to identify changes and additions required to adequately record testimony, constitute and preserve case files and make case files available to public inspection.

- (3) Provide technical assistance in drafting the necessary changes to legislation, and court rules and practices to facilitate appropriate case management policies.
 - (4) Provide technical and material assistance to support implementation of improved case management practices in the courts of Armenia, including courts of first instance.
- g. *Court administration assistance in budgeting and financial practices.* While the 1998 Law on the Judiciary purports to transfer budget and financial authority to the CCC, administrative practice has transferred much of the financial authority to the Ministry of Finance. Review of applicable legislative and normative acts is needed to identify the steps necessary to allow the courts to genuinely and responsibly control their own financial and budgetary practices. Implementation of the changes required for judicial control of court finance will require technical and material assistance to ensure effective and accountable financial and budgetary administration in the courts.
- h. *Support for implementation of the Code of Judicial Conduct.* The Code of Judicial Conduct requires further assistance to support its implementation. Implementation of the Code can be supported by development of a commentary for judges providing specific examples of practical applications of the Code of Judicial Conduct or enhancements that provide adequate specificity. These would be appropriate activities for continued USAID assistance in this area.
- i. *Assistance in implementing constitutional amendments concerning the judiciary.* In the event the constitutional amendments are passed—and to the extent assistance is requested by the judiciary, Constitutional Court or applicable drafting group—assistance with the amendments to laws (both with preparation of amendments and assisting their implementation) will be necessary to implement and accommodate the constitutional changes. These are likely to include amendments to or new versions of the Law on the Constitutional Court, Law on the Council of Justice, Law on the Status of Judges, and Law on the Judiciary.

Any assistance in this area could include an emphasis on the development of laws and rules that concretely define the criteria to be applied by the Council of Justice in proposing judicial candidates and recommending judicial disciplinary proceedings, and the respective roles of the members of the Council of Justice and the Minister of Justice in recommending judicial candidates to the president. There is concern that the executive branch will continue current practices to keep control over judicial nominations and disciplinary procedures. Well-crafted and implemented legislation is important to ensure that the intent of the constitutional amendments to provide greater judicial independence is realized.

There has been a suggestion that a drafting group may begin working on revisions to the Law on the Council of Justice in the absence of the constitutional amendments in order to enhance the active role of the members of the Council. This would also be an appropriate area for USAID assistance. However, given the likely contests for power between the executive branch on the one hand, and the judiciary on the other hand, USAID/Armenia should determine that its participation is specifically desired with respect to amendments to laws—whether before or after any successful referendum—that will have the effect of weakening the role and powers of the Ministry of Justice, including the Law on the Council of Justice, and assess carefully the extent to which its technical assistance is likely to have impact.

- j. *Technical assistance supporting simplification of the Civil Procedure Code.* There is a need to identify sections of the Civil Procedure Code that unduly inhibit case processing in the Armenian context and to support drafts of the needed changes.
- k. *Publishing court decisions.* Publishing laws and court decisions is obviously a necessary component of supporting a transparent and accountable legal system, and enabling lawyers and the public to demand the protection of rights and implementation of laws. Any continued assistance here should be provided in a manner that anticipates, to the maximum extent practicable, the development of a system for the collection, publication and dissemination of laws and court decisions for which an Armenian organization will assume responsibility and ownership at the earliest possible stages, rather than *ad hoc* publications. This is likely to require further coordination with the World Bank's Judicial Reform Program.

4.3.2 Institution Building Support to the Bar

The private bar should be strengthened with an emphasis on approaches that:

- (1) Support an accountable bar that acts in accordance with ethical and legal standards.
- (2) Provide the bar with the critical legal knowledge it needs to carry out its role in representing citizens and making legally accurate and compelling presentations to facilitate judges applying the law when cases are taken to court.
- (3) Enlist the bar as an effective coalition partner that is actively involved in supporting necessary judicial system reforms and assisting their implementation.
- (4) Strengthen legal education.

Illustrative Programmatic Activities

- a. *Continued assistance with the draft Law on Advocacy.* There is still the need to draft an acceptable final version, facilitate adoption and assist with implementation.
- b. *Training for advocates and other lawyers on practical skills and new laws.* The professional level of private lawyers with regard to both legal substance and advocacy skills remains low. Training assistance and outreach should not be limited to advocates.
- c. *Code of Ethics for advocates.* Following adoption of the Law on Advocacy, assistance will be needed with preparation of a code of ethics that will be applicable to all advocates.
- d. *Targeted assistance to law schools.* Technical assistance to support curriculum development, interactive teaching and practical skills courses have been particular points of emphasis. In the past, USAID/Armenia has directed all of its assistance to the YSU Law School. Any future assistance programs should be made available to one or more accredited private law schools. YSU should not be automatically excluded from the opportunity to participate in future assistance programs. Decisions to include particular law schools as partners in programs to support legal education should be based on the programmatic judgment of what most benefits legal education and the development of the legal profession in Armenia, and include an explicit commitment from the law schools to implement changes contemplated by the assistance. It should be made clear that absolutely no corruption will be tolerated in connection with any supported activity of the program including grades, participation or

anything else. Programs with law schools should be monitored for corruption and should be terminated with a law school if even a single instance of corruption in connection with the program is found.

- e. *Support preparation and dissemination of commentaries.* Legislation, particularly of the new laws, is not well understood by the practicing bar or the judiciary. There remains a need for commentaries that explain how new laws should be applied. Support for the preparation of commentaries is time intensive and accordingly USAID/Armenia should carefully consider requests for commentaries from Armenian counterparts. This consideration should include such factors as the importance of the particular substantive or procedural law, whether that law is likely to be substantially revised, and the extent to which a commentary is necessary to help clarify the application of the law.

4.3.3 Continued Support for Public Outreach and Awareness Activities

International experience suggests that measures providing for increased transparency and accountability generally increase effectiveness of and reduce corruption in government operations. Recent Armenian experience supports the applicability of this tendency to the Armenian legal/judicial system. Observers close to the Armenian court system generally agree that although Armenian courts remain low in competence and highly corrupt, there has been some improvement in recent years. Corruption has become less open and more cases are now decided competently on the merits.

Civil society and the citizens of Armenia should be provided continued support to strengthen their capacity to monitor and publicize the performance of the judicial sector and executive branch to ensure that judges and executive branch officials act accountably by applying the law. In some instances, USAID/Armenia support for these organizations may be located in other existing or planned USAID/Armenia activities, including those focused on strengthening civil society, such that these activities need only to be slightly modified and better linked to rule of law assistance. USAID/Armenia should also include support for initiatives to increase the public's knowledge of its specific legal rights and responsibilities, both under substantive laws and laws regarding the organization and operation of the judiciary. This will support the public's ability to exercise its legal rights and ensure better accountability of the judicial and executive branches.

Illustrative Programmatic Activities³

- a. *Locations for citizen complaints of judicial or advocate misconduct.* Well-publicized locations with the Council of Justice and the advocates unions where citizens can file complaints regarding judicial or advocate misconduct should be established. In order to ensure that complaints comply with applicable rules, standard forms may be desirable.
- b. *Investigative journalists.* Support (institution building support, other technical support and small grants) investigative journalists, including assistance regarding legal reform concepts and their intended effects.

³ This list is illustrative and not exhaustive. The rule of law recommendations are best taken in tandem with the anti-corruption recommendations presented later in this report.

- c. *Human rights*. Support (institution building support, other technical support and small grants) human rights NGOs that report on and advocate for protection of human rights, both generally and in specific cases.
- d. *Court monitoring*. Support (institution building support, other technical support and small grants) organizations that are interested in court monitoring, including “politicized” cases where the government is likely to pressure the courts to render particular decisions.
- e. *Public outreach regarding legal rights*. It will be important to support preparation by advocates’ unions, other associations of lawyers, and other NGOs of legal outreach materials with concrete information regarding legal rights and how to exercise them. This could include brochures, other print media, video spots for television and public assemblies. Production and sponsorship of this outreach should be by Armenian organizations.

Anti-Corruption Assistance in Armenia

5.0 The Problem of Corruption in Armenia

5.1 Introduction

From the very top of government to the traffic police and citizens on the street, systemic corruption is one of the most serious development challenges facing Armenia. The populace continues to suffer from a legacy of weak, opaque, and unaccountable institutions now dominated by a small core of power bodies within the executive branch (the president and key figures from the defense and security arenas and the procuracy). If Armenia is to tackle its serious economic and social problems and develop a competitive niche in the global marketplace, the country requires what it does not presently have—open systems and public and private sector institutions that work responsively and effectively in their respective spheres. Unless and until transparency and accountability are increased dramatically in public and private sector institutions and clear boundaries separate public and private sector interests, Armenia’s democratic and economic progress will remain constrained—thwarting integration into the international community and global marketplace.

In assessing Armenia’s future, corruption is no petty matter and deserves a place on the national agenda right alongside the Nagorno-Karabakh (N-K) conflict and relations with Turkey. Unfortunately, those geopolitical issues along with the lingering impact of the 1999 assassinations in the National Assembly and the upcoming presidential and other elections have relegated the issue of corruption to a much lower place on the national agenda. As of the date of this assessment (September 2002), the GOAM has yet to demonstrate the sustained political will necessary to give corruption the attention and resources it deserves. Moreover, civil society has not been truly invited in and remains highly distrustful of GOAM A/C steps to date and sees little reason to be other than skeptical of the GOAM’s commitment to altering the status quo.

The assessment team, however, sees some encouraging opportunities for change including those presented by release (as limited as it has been) of the August 1, 2002 “Anti-Corruption Strategy Final Report” by an Expert Group engaged with World Bank support to prepare a comprehensive set of A/C recommendations for the GOAM. Whether or not endorsed by the GOAM in whole or in part, this initiative—though less than inclusive and participatory to date—may provide a focus as well as entry points for raising public awareness of the nature, extent and costs of corruption in Armenia and what should and can be done to control and prevent it. With USAID and other donor support and leadership, the Expert Group’s Final Report can become a vehicle for mobilizing more visible and vocal demand for change in the way public officials conduct the business of government and interact with the private sector.

5.2 The Several Faces of Corruption in Armenia

Corruption is a multidimensional phenomenon with many faces. In Armenia, corruption in its most malignant forms attacks, infects and takes over the internal operating systems of political, economic and social institutions. In its report, the Expert Group identifies five categories of corruption (bribes, theft/illegitimate acquisition of assets, clientelism, political corruption, and conflict of interest) and two levels of corruption in the public sector (grand corruption or “state

capture” and administrative corruption). The assessment team found credible evidence of the substantial existence of each.

- a. *Bribes*—in the form of unofficial, illicit payments to public servants—are paid by businesses and ordinary citizens for a host of purposes. Bribes may be paid to secure access to a scarce benefit; obtain speedy or preferential service; avoid a cost or sanction; or to receive a benefit that is not scarce, but subject to the control of public officials with high discretion, low transparency and low accountability. Bribes may also be paid for inside information or to prevent others from sharing in a benefit or to impose a cost on someone else. In Armenia, unofficial payments may range from a few hundred or a thousand drams placed in the grabbing hands of traffic police to thousands of dollars paid to public officials for the purchase of lucrative ministerial offices, key parliamentary votes and the outcome of judicial decisions.

In 2002, unofficial payments are ubiquitous in Armenia—literally from the cradle to the grave. Typically, families of newborn Armenians must pay an unofficial payment of three hundred or more dollars to secure the release of mother and child from the hospital. As one expectant mother said, “It’s like paying \$300 to get out of jail. You just do it to escape; otherwise the hospital will invent reasons to keep you and your baby hostage.” As a young child grows, unofficial payments to teachers and administrators continue when the child is in primary school or later seeks entrance to medical or law school. To avoid the harshness of military service a parent may feel compelled to expend thousands of dollars to secure an exemption for a teenage son confronted with the prospect of brutality and severe injury or death. For would-be entrepreneurs, a 1999 survey by the European Bank for Reconstruction and Development reveals that the percentage of firms that pay bribes “frequently” is about 40%, the third highest level in its sample, and the average bribe as a percentage of annual firm revenues was one of the highest of all countries in the sample. Small farmers and food processors are no better off. To obtain inspection certificates, permits and licenses from public sector inspectors and other officials charged with food and product safety, (but without functioning laboratories capable of generating accurate test results) bribes are the short-term fix—all to the detriment of safety, quality, new investment, competition, long-term competitiveness and the ROL.

- b. *Outright theft and illegitimate acquisition of State or personal assets through the misuse of public office* and power are no strangers to Armenia. This includes massive theft of electric power in the energy sector amounting to a staggering loss of millions of dollars of revenue. Payment of wages to public employees that do not exist or regularly show up and perform real public services is another example. As one relatively well-to-do resident of a district in Yerevan asked rhetorically, “Why is it that there are 1000 street sweepers on our district payroll and no one ever sweeps our streets but the residents of our condominium?”
- c. *Clientelism*—promoting the interests of family or social network members—abounds in Armenia. Nepotism and the use of social connections to obtain public sector employment are the order of the day. At times referred to as clans, family and social networks function as employment agencies and take care of their own—often at the expense of transparency and accountability. “Meritocracy” in the public sector may find a foothold if and when the

January 2002 Law on Civil Service is implemented, but for the foreseeable future, absent aggressive implementation and substantial funding, clientelism is likely to trump transparency, accountability and meritocracy.

- d. *Political corruption* may take the form of violation of election laws, illegal financing of electoral campaigns, solving parliamentary disputes in an illegal manner, and improper lobbying. The assessment team heard from more than one source of outright buying of votes in parliamentary elections. The international consensus is that Armenia's elections were free but not fair. Moreover, one credible source close to the subject matter confirmed that some members of Parliament seek office for the opportunity to sell their votes and protect their own or others' economic interests while enjoying the benefits of virtual immunity from prosecution. As he put it, these unofficial "perks" more than offset the low official benefits of public office.
- e. *Conflict of interest* is defined as the use of official power for personal benefit or to achieve unfair market advantage through manipulation of regulatory and legislative means. Conflict of interest forms the very core of grand corruption or state capture in Armenia. This pernicious form of corruption involves the misuse of political power for private gain by politicians or senior level officials who use the machinery of government (executive, legislative and judicial power) to further private interests at the expense of the public interest.

Grand corruption of this nature stands in contrast to administrative corruption carried out by street level or low level minor bureaucrats with whom the majority of citizens have contact on a daily basis. This distinction can be misleading, however, since grand corruption and administrative corruption are often inextricably linked through complex networks. Administrative corruption represents the base of a pyramid of corruption in which unofficial payments collected from businesses and citizens are shared (demanded) upward through patronage networks designed, implemented and controlled from the top.

5.3 A Captured State—A Captured Society

The assessment team shares the view stated in the Final Report by the Expert Group that the fusion of political and economic power and the lack of separation between the public and private sectors are among the main causes of corruption in Armenia. The smallness of the country with its interwoven social and family networks has led to a fusion of the public and private sectors in practice if not in law. The Soviet-era fusion of private and public sectors created the conditions for the post-Soviet period. The dominance of the party in organizing society led to the existence of the public sector being the sole, "official" means of distributing resources, but enterprising "public servants" nevertheless devised ways to use state assets to generate additional income for personal gain. A city official in Vanadzor described the mentality, "In the Communist period the worker was told 'you are the state' so often he came to believe it."

Times may have changed, but today public officials nevertheless use the state apparatus to further their own individual and family business interests. In many cases, civil servants operate and own businesses directly regulated by the public offices that they control, manage and

administer. In the words of the Expert Group, “there exists the merger of the three branches of power: legislative, executive and judicial with large business within the economic sphere to develop a “captured” State.” If misuse of public office for private gain is an accepted definition of public sector corruption, then according to the Expert Group, “the majority of the public sector of Armenia can be considered to varying degrees corrupt.” As one well-connected interviewee put it, “the State has in effect franchised the economy for the benefit of high ranking ministerial officials and their families and friends.” Implicit in his remarks is that the franchises are nearly exclusive, if not monopolies, then certainly oligopolies. Others interviewed spoke of particular individuals in government having achieved monopoly control of various economic sectors such as the import of pharmaceuticals and oil, for example.

Through interviews conducted with credible sources, the assessment team heard allegations of high-level ministerial officials actually purchasing their positions for thousands of dollars with payments reportedly ranging from as much as \$50,000 to \$200,000. The more valuable ministerial positions are those that present the greatest opportunities for realizing a return on the “investment” made. Ministries engaged in energy, defense and revenue collection were specifically mentioned by name. In some cases, those who purchase the opportunity to engage in grand rent-seeking recover their investment and substantially more by in turn selling mid-level positions to candidates who in turn sell low-level positions, thereby creating a pyramid scheme with built-in incentives that encourage rent-seeking from the top to the bottom. As one observer noted, public officials who engage in grand corruption of this nature have every reason to be greedy—the half-life of public office may indeed be short since those who sell positions have the incentive to “turn over their inventory.” This creates an environment in which the name of the gain is to “get it while you can,” for tomorrow you may be out of public office.

Low public wages are often cited as one of the causes of corruption. However, raising base wages without introducing other systemic public sector reforms will have little impact on the type of grand corruption and state capture described above. Having said that, it must also be said that most civil servants receive wages below what is necessary to cover the costs of living without other income or assistance. In Armenia, civil service acts, in effect, as a “welfare or workfare” program for many. It provides the dignity of a job and a small wage plus the opportunity in many cases to augment one’s salary through unofficial payments and other corrupt practices. As others have observed, the problem in Armenia is that while the role of government and the ability of citizens to pay for government services has significantly decreased, the public sector has not decreased to the size that taxpayers can support. For the most part, the civil service is too large for the size of the economy. Rationalization and “right-sizing” are called for, but politically difficult to bring about—constitutional guarantees of free social benefits being one part of the problem. The health sector is but one example of a sector in which systemic corruption cannot be adequately understood or addressed without addressing how the system is financed and what type and number of facilities and personnel the system should and should not have, given the population and resources available.

Corruption among the broadest layers of the society has inspired fear towards the future which is evidenced by the deterioration of business life, increase in the expectation of instantaneous personal profit and the accumulation of illegal capital to the detriment of production capital, low

level of political and social activeness of the society, and emigration that has shrunk the population to less than three million persons as compared to 3.8 million in 1990.

In the international marketplace, Armenia's low competitive stature is borne out by the assessment team's finding that for the most part, Armenian diaspora are far more willing to send their dollars for charity aid than they are for investment. The investment environment is perceived as high risk with endemic corruption mentioned as a key factor contributing to unacceptable levels of risk and increased costs. In the meantime, the N-K conflict and other geopolitical issues dominate the debate about Armenia's present and future while the negative impact of corruption and its relationship to democratic and economic development receives little more than occasional mention.

In fact, analysis by the assessment team revealed gross examples of corruption across the entire spectrum of society. The analysis and interviews suggest that corruption has almost reached a point where there is a culture of improbity. The team heard credible allegations or examples of corruption in the military, the National Assembly, the judiciary, customs, state revenue, the school system, health system and pharmaceuticals, banking, energy and agriculture sectors, NGOs, local government, and national and local elections.

6.0 Anti-Corruption (A/C) Efforts to Date

6.1 Government of Armenia

Prior to 1999, efforts of the GOAM to combat corruption were negligible. According to the 1999 Code on Criminal Procedure, abuse of power and exceeding authority by public officials are crimes punishable by two to 10 years of imprisonment. Bribery is punishable by eight to 15 years. A new criminal code pending adoption will further strengthen these elements. Yet despite the severe legal penalties these criminal acts remain widespread. Prosecution tends to be targeted at “small fish” only.

In 1999, the government of Prime Minister Vazgen Sarkisyan, with active encouragement by the US Ambassador, began formation of a state anti-corruption committee and approached the World Bank to discuss funding support. The events of October 1999 when Prime Minister Sarkisyan and other officials were assassinated halted the A/C initiative.

Recent GOAM attempts to strengthen A/C measures in the legal framework have had mixed results. For example, on September 1, 2001 a new Law on Disclosure of property and income by top government officials took effect, which was intended to shine light on potential conflicts of interest and influence peddling and provide sanctions for failure to report. However, lacking any investigative power, monitoring or enforcement mechanisms, to date this law has been entirely without effect. USAID assistance resulted in a new Law on Procurement that requires government procurements over \$1300 be competitively bid. USAID also provided training of procurement officials to support the development of this law. However, the true test of whether or not the law is effective will be:

- (1) when internal and external audits of procurements are routinely performed and the results made available to the public;
- (2) when audit findings that evince egregious violations of law result in prosecutions and convictions;
- (3) when contractors, suppliers and the public have access to timely information on which companies receive government contracts and who owns and controls those companies; and
- (4) when disappointed bidders have recourse to and use an administrative review and appeals process that serves as an expedient and impartial forum dedicated to assuring compliance with the procurement law and implementing regulations.

A Law on Civil Service passed in January 2002 limits civil servant participation in certain business activities. It is too soon in the implementation of civil service reform to conclude if this law will have demonstrable impact on the behavior of civil servants, many of whom lack familiarity with an employment system based on merit, ethical conduct and service to the public. The training and other inputs envisaged under the World Bank Public Sector Reform Program will be key to the successful implementation of this law.

In 2000 the Armenian government established the current State Committee on Anti-Corruption as an interministry body chaired by the Prime Minister. In 2001 the World Bank, working with

the State Committee on Anti-Corruption, agreed to provide an institutional development grant to the Office of the Government to fund a group of international and Armenian experts to draft a comprehensive A/C strategy referred to earlier in this assessment report.

A Final Report produced by the Expert Group was completed in August 2002. It was circulated within the government to about 50 ministries and agencies for review and comment due by the end of September 2002. USAID and other international donors were offered copies of the report, however drafting took place in a process that was limited in terms of openness and with limited Armenian public, NGO and business participation. When the assessment team left Armenia on September 28, 2002, the GOAM had not yet taken an official position on the strategy produced by the Expert Group and the NGO Coalition Against Corruption formed by Transparency International had not seen the Final Report.

With no notable dissent, the overwhelming number of those who expressed an opinion to the assessment team speculated that the GOAM will take little action within the next 12 months to advance an A/C agenda—if for no other reason than because elections are ahead and it is impossible to predict how an A/C initiative would affect their outcome. As a postscript, the team has been informed that in early December 2002, during the period of finalizing this assessment report, the GOAM produced a substantially watered-down version of the Expert Group's report. This most recent report was discussed and reviewed negatively by the US Ambassador and other international donor representatives in a meeting with the Prime Minister. It is unclear at the time of the submission of this assessment, what form, if any, the final GOAM A/C strategy will take.

6.2 Organization for Security and Cooperation in Europe (OSCE)-led International Anti-Corruption Working Group

The international donor community meets monthly in a Donor Coordination Group (DCG), the chair of which is rotated among the USAID Mission Director and the World Bank and UNDP representatives. The work of the DCG is supplemented by over twenty theme groups on specific topics. These working-level groups discuss policy and operational issues and advise the higher-level DCG on recommended actions. This elaborate process is geared toward presenting a more unified and consolidated donor position in policy dialogue with the GOAM.

The OSCE-led Anti-Corruption Working Group, in which the US government (USG) actively participates, has emphasized to the GOAM the importance of adopting and implementing a comprehensive A/C strategy. The international Working Group expressed its basic support for the Experts Group's August 2002 Final Report and offered its assistance to the GOAM in the implementation of the program if endorsed.

The assessment team did not make an in-depth review of all donor activities related to corruption in Armenia, however, it is clear there are several international donors directly and substantially involved in A/C assistance efforts. The World Bank, which in addition to providing \$300,000 to the Office of Government for the development of the Anti-Corruption Strategy, is implementing a major public sector modernization program. The Dutch and British governments are collaborating with the World Bank in this effort. The World Bank is also funding a judicial reform program. While Armenia is not a party to the Council of Europe's (CoE) Civil Law

Convention on Corruption, nor the Criminal Law Convention on Corruption, CoE has provided technical review and assistance to Armenia in constitutional reform and other aspects of the legal framework. CoE also promulgates the Council's Code of Conduct for Public Officials. The Dutch government and UNDP have plans to assist the Parliament's Chamber of Control. OSI's modest program in Armenia includes a grant to one NGO for A/C activities. OSI support for training of investigative journalists and support for reforming school administration and financing should indirectly serve to bolster A/C efforts.

6.3 Transparency International-led Anti-Corruption NGO Coalition

A coalition of over 25 NGOs concerned with the problem of corruption has been formed under the leadership of Transparency International's (TI) local chapter. The World Bank-funded activity to produce an A/C strategy was intended to actively promote the involvement of civil society in an open and transparent drafting process. Unfortunately however, the Expert Group drafting process did not include broad governmental or nongovernmental participation in its work. During the drafting process there were three public forums of limited scope and attendance. When the assessment team met with TI representatives in September 2002, the team was informed that Transparency International had not yet seen the Final Report submitted to the GOAM in August 2002.

6.4 USG Assistance

The USG was an early leader and continues to be an active player in the fight against corruption in Armenia. The USG has provided significant financial and technical support and is by far the largest bilateral donor in the country. Successive US ambassadors have engaged in high-level dialogue about corruption over the years and the topic was high on the agenda of the most recent semi-annual meeting of the US-Armenia Task Force, the forum for bilateral discussion of US multi-agency assistance.

US Embassy programs have addressed corruption in law enforcement training and international visitor programs, with funding from State/INL, Department of Justice (DOJ) and the Department of the Treasury. State/INL is funding four technical assistance projects in law enforcement, including equipping and training an independent forensic center, supporting a shared database for law enforcement agencies, supporting police training centers, and sponsoring in-country seminars on a variety of topics such as crime scene investigation, white collar crime, and financial crimes. State/INL also supports participation by Armenian law enforcement personnel at the International Law Enforcement Institute in Budapest. In cooperation with the DOJ, State/INL funds a criminal law advisor as part of the American Bar Association's Central and Eastern European Law Initiative (ABA-CEELI).

The Embassy's economic section, through its regular monitoring of the business environment and the assessment of the climate for foreign investors, produces useful reports of the legal, institutional and political environment. The Department of Commerce, in connection with local Armenian private sector organizations and businesses, launched a "business ethics initiative" in early 2001 and plans to extend this program with a train-the-trainers activity and the development of a *Business Ethics Manual*.

The largest share of USG assistance comes from USAID. The five-year strategy for 1999-2003 identified corruption as a major theme in the program and as a result, most if not all of the activities currently being implemented in USAID's portfolio impact directly or indirectly on reducing corruption. USAID's democracy and governance activities to develop legal new frameworks and improve the ROL, to provide civic education and enhance local government capacity, strengthen NGOs and independent media, support political party development and elections, and increase professionalism in Parliament, all contribute to strengthening civil society, encouraging the free flow of information and enabling private citizens to better understand and exercise their rights in a democracy. Social transition activities aimed at reforming sector finance and building national service delivery capacity are establishing more transparent information systems and more efficient and effective public and private institutions delivering appropriate social welfare and health benefits that can be sustained in the future. The Ministry of Social Security will introduce a national system of identity cards that will reduce fraudulent claims and permit greater control over scarce public resources.

USAID's private sector program aims at systemic restructuring of the economy through commercial legal and regulatory reform, tax, fiscal and customs reform, accounting and banking reform, and small business and agricultural development. These activities address the fundamental systemic weaknesses in management of public sector resources that provide opportunities for rampant bribery, extortion, theft of public assets, tax evasion, tax and police harassment, influence peddling and other forms of corruption widely acknowledged to plague, for example, the customs and revenue authorities. USAID's energy sector program, by providing tamperproof distribution and transmission meters and a data acquisition system can reliably monitor electric power. Losses were reduced by six million dollars in the first half of this year. Equally significant is the capability to track misuse of electric power and identify where extensive diversion to non-paying users is taking place, including enterprises under the control of high-placed government officials.

Taken together, these activities reflect an appreciation of the seriousness of the corruption issue and an ongoing commitment on the part of the USG to use its considerable influence to reduce corruption in Armenia. Nevertheless, the evidence suggests the problem is worsening. The assessment team suggests that the USG can make better use of its A/C resources by developing a US mission-wide strategy for combating corruption at the Country Team level, one that builds on all available resources, assigns appropriate roles and responsibilities to all embassy agencies (including military) based on specialized expertise, mandate and funding availability. To a degree, the current USG A/C effort represents an unfocused "targets of opportunity" approach, rather than one guided by overall strategic priorities. The USG can itself demonstrate a greater sense of urgency about the harmful nature of corruption in Armenia by actively coordinating assistance in this area. This will provide a better basis for consistent USG policy dialogue at all levels, in all sectors, and greater US Embassy activism in the A/C arena.

Finally, given the substantial assistance resources brought by the US into Armenia, and given the role of Diaspora Armenians in influencing allocation of congressionally mandated funds, it would also be useful to engage this community in the US in the A/C effort as well. A more visible

A/C partnership with Diaspora groups could help bolster the USG assistance programs when imposing conditions or withholding funding until actual results are achieved are necessary. The recent USAID/Armenia decision to create a position for a Diaspora Coordinator offers one promising mechanism for developing this partnership.

7.0 A Strategic Framework for Combating Corruption and Recommended Programmatic Approaches

7.1 Public Opinion of Corruption in Armenia

The literature on corruption worldwide acknowledges that, almost by definition, measuring actual corruption with any reliability is difficult, if not impossible. The problem with securing useful information about official corruption is a basic one. “Bribery excites no complaint, as both guilty parties profit from the illegal arrangement. Extortion may involve an unwilling victim but produce no complainant because of the citizens’ lack of confidence in the A/C process. A further difficulty is the reality that concentrations of wealth and corruptible influence are likely to occur in highly complex and specialized government activities. As a consequence, fraud can be easily camouflaged so that it will be invisible to the non-expert, including the average investigating authority.”⁴

Most of the data used in the analysis of corruption are drawn from surveys that reveal public opinions and perceptions of corruption as opposed to scientific measurement of corrupt acts *per se*. When available, data on numbers of prosecutions and convictions of corruption and associated offenses can offer an insight into the effectiveness of criminal law enforcement efforts, but by itself this information yields little that is useful in determining the full nature and extent of corruption problems or the web of interrelated causes.

Over the past several years three Armenian civil society organizations have carried out research on public perceptions of corruption, with financial and technical support from international donors including the OSI, World Bank, Department of International Development of the British government, OSCE and USAID. In December 1999 the Civil Society Development Union (CSDU) carried out a public opinion survey on corruption of approximately 600 residents of Yerevan. In 2001 the Armenian Democratic Forum (ADF) conducted a sociological survey of private entrepreneurs’ opinions of the accessibility, quality and obstacles to delivery of public services, and a similar survey of households. Corruption was a major theme in the responses. In September 2002 the Center for Regional Development/Transparency International Armenia (CRD/TI) published the results of the first stage of a country corruption assessment, a public opinion survey of a thousand households, two hundred entrepreneurs, and two hundred public officials.

These surveys provide a basis for analyzing Armenian public opinion of corruption issues over time. Unfortunately, it is not possible to assess how public perceptions of corruption in Armenia compare with those in other countries this year. Armenia was not rated in TI’s 2002 Corruption Perceptions Index (CPI) due to the fact that the requisite number of recent, independent surveys (three) had not been carried out.

It is clear from the available opinion research that a majority of Armenians disapprove of corrupt practices and identify corruption as a significant societal problem. The 1999 CSDU study focused on definitional questions in particular. This survey demonstrates that respondents

⁴ UN Manual on Practical Anti-Corruption Measures for Prosecutors and Investigators: 2002, paragraph 67.

understand corruption and define it broadly, beyond the mere giving and receiving of bribes, to include concepts of nepotism and abuse of power. Over 90% of the respondents identified “taking money for closing a case in the prosecutor’s office,” “taking money by a high state official for providing certain services,” as well as improper “resource expenditure under the State budget” and “appointing a ‘familiar person’ to key positions with a purpose of having a part of the profits from further operations” as corruption. The 2001 ADF studies highlight the role corruption plays in rendering public services (including health, education, and utilities) inaccessible—particularly to the poorest, underlining the extensive hidden costs and impoverishing effects of corruption. These findings are supported by other research worldwide.

The 2002 study by CRD/TI released at the time of the assessment team’s visit is the most comprehensive study directly addressing corruption in Armenia to date. This sample of 1400 people in households, businesses and public offices generally agreed that corruption was a serious problem, that it is most often initiated by state authorities, that poor law enforcement (“ineffective control and punishment mechanisms”) is a driver of corruption, and that it has gotten worse in the past five years. Average citizens feel that their complaints will not be addressed and they doubt the guilty will be brought to justice. Some fear that their complaints will be turned against them. All three studies converge in identifying the sectors that are most plagued with corruption, namely the police, prosecutors and judges, and the tax and customs authorities.

But opinions diverge widely on causes and solutions—indeed conventional wisdom on corruption is virtually a cottage industry in the country today. As stated previously in this report, the view that low public sector wages cause corruption is widely held, attributing current patterns of corruption to increased levels of poverty and economic desperation. Others take a position that Armenian culture is primarily responsible, that corruption is an outgrowth of the tradition of exchanging gifts and favors in familial and other relationships. Still others believe corruption is a manifestation of “path dependency,” referring to coping mechanisms, survival strategies, habits and societal norms formed during the long communist period that have not yet been replaced.

There is a strong tendency to blame politicians for corruption. “A lack of political will to address corruption” is an oft-repeated complaint. In the words of one observer from the NGO community outside of Yerevan, “expecting the Government of Armenia to combat corruption is like asking the wolf to shepherd the sheep.” Yet, ironically, the top three responses to CRD/TI’s survey question “Who can play a determining role in reducing corruption in Armenia?” were the president, the government and the judiciary, in that order. Thus is revealed a painful dilemma—one that may explain the seeming paralysis about finding entry points to end the vicious cycle.

The assessment team found that frustration is widespread, as is the view that corruption is so ingrained as to be inevitable or perhaps “immortal” as one Armenian characterized it. Some Armenians simply throw up their hands and opine that that pressure from outside the country is the only hope for reversing the trend of corruption in the country. Others emigrate.

Yet, the surveys suggest that many Armenians still believe corruption can be reduced. The continuing disapproval of corruption in principle is in itself a positive sign. It indicates that Armenia remains an environment where appropriate A/C measures have a chance to receive

public support. Realistically however, the current low level of development of civil society organizations, the political passivity of the Armenian public, and the virtual absence of any mutual trust between civil society actors and public officials, will remain major constraints to implementing future public-private A/C initiatives.

Reasonable Expectations

Effectively breaking into the complex web of circumstances on which corruption currently thrives will require a much higher level of commitment, leadership and intervention than is currently demonstrated by the Armenian state, civil society entities, and international donors, including the USG. The findings and conclusions of this assessment suggest that considerable courage, will, personal responsibility, and financial resources will be needed on the part of many institutions and individuals in Armenia if the problems of corruption are to be effectively addressed.

A word of caution is in order. Donors must understand that corruption is deeply entrenched in Armenia. Notwithstanding some public professions of opposition to corruption and commitment to its eradication, those public and private sector officials who profit from grand corruption do so handsomely, and all too often they hold key positions of political and economic power and influence. In short, many of those who are in the strongest position to combat corruption are the very ones who are its chief beneficiaries.

Political and economic elites in Armenia may have much in common, but they are not monolithic. There are new and emerging reformers, and there are those who favor some level of reform in certain areas even as they oppose reform in others. Donors need to find the fissures, garner support for reforms where they can, and buttress the reformers while recognizing that those who benefit from corruption most have little or no incentive to change their behavior. Outside assistance will deliver no quick cure or silver bullet.

The most effective role for USAID/Armenia is one that supports the generation of effective and realizable demand for reform. Armenians have the primary responsibility for controlling corruption within and across its borders. The role for USAID/Armenia and other donors is to partner with host country actors engaged in their own genuine A/C efforts. Through complementary and supplementary assistance and cooperative interaction, USAID/Armenia can play a key role in helping host country actors mobilize and leverage their own domestic resources in the battle against corruption.

A major strategic challenge for USAID lies in facilitating development of the conditions necessary for reform and then facilitating actual reform of institutions with a view that promotes transparency and accountability on the part of those vested with the authority and power to manage, allocate and distribute public and private resources. These systemic changes must lead to new incentive systems and effective institutions of accountability that promote the ROL and reward good governance rather than short-term rent seeking that furthers personal and family interests.

7.2 A Theoretical Lens for Devising Strategic and Programmatic Approaches to Combating Corruption

7.2.1 Principal-Agent Theory

A strategic framework for combating corruption and promoting integrity in public and private sector institutions begins with a sound theoretical foundation. Principal-agent theory provides a powerful lens for viewing the problem of corruption and A/C solutions because it deals explicitly with the problems arising from delegation. Delegation is a ubiquitous and defining feature of every relationship in which one actor, the principal, delegates authority to another actor, the agent, to carry out functions intended to benefit the interests of the principal.

Representative democracies consist of a “chain of delegation,” running from principals to agents: voters to their representatives in Parliament, from the Parliament to government (prime minister and ministers), from the government as a whole to single ministers, and from government to bureaucracy. In the private sector, the principal-agent relationship of interest in the context of corporate governance is the one between stockholders and management.

Principal-agent theory teaches that:

- (1) The interests of principals and agents do not generally coincide; therefore, there are natural conflicts of interests between the two.
- (2) Agents are likely to pursue their own interests; consequently, prudent principals may not assume that agents will pursue the principals’ interests.
- (3) Agents will seek to maximize their own returns subject to the incentives offered and constraints (controls) imposed by principals.
- (4) Agents can never be controlled completely—total control is either not feasible or too costly.
- (5) Agents generate, possess and control relevant information which principals need to know in order to monitor performance and protect their interests.
- (6) Perfect representation by agents is an illusory goal—principals will always incur some losses due to divergent interests, misaligned incentives, imperfect controls, and asymmetric information.
- (7) Corruption represents a premeditated form of agency loss arising from the rent-seeking behavior of agents pursuing their own illegitimate interests in violation of the legitimate interests of their principals. When the interests of principals and agents diverge and when agents elevate their own divergent interests over the interests of their principals, corruption occurs. Corruption is, in effect, an abuse and failure of the principal-agent relationship.

Because agency losses can only be minimized, never completely eliminated, a prudent principal interested in preventing corruption and promoting integrity in the relationship will structure the relationship so that the actions taken by the agent produce the optimal results the principal can reasonably expect to achieve, given the choice to delegate and create a principal-agent relationship in the first place. To minimize agency losses, prudent principals employ seven primary tactics:

- (1) Reduce the number of principal-agent relationships (through privatization, deregulation and rightsizing of institutions).
- (2) Select better agents (thorough free and fair elections and meritocracy processes).
- (3) Align better the interests of principals and agents by eliminating perverse incentives and replacing them with appropriate ones (both positive and negative).
- (4) Circumscribe the authority and discretion of agents (delegate less and impose standards and procedures).
- (5) Reduce the monopoly power of agents (through increased competition and choice—multiple agents with overlapping jurisdiction).
- (6) Narrow the asymmetric information gap (through transparency—disclosure of information and more open, participatory processes in which the principal participates).
- (7) Create effective institutions of horizontal and vertical accountability to monitor, control, reward and sanction agents.

7.2.2 Horizontal and Vertical Accountability

Horizontal and vertical accountability are complementary and essential principles in the design of any constitutional democracy. In this conceptualization of accountability, the horizontal and vertical planes correspond to the distinction between state and society. Horizontal accountability is exercised within the state by different institutions of the state while vertical accountability is exercised by societal actors with respect to state institutions and officials.

Horizontal accountability consists of the checks and balances within the state, one state institution (whether legislative, executive or judicial) checking the authority of another. External auditors (e.g., Supreme Audit Institutions), internal auditors, ombudsmen, A/C agencies, courts and other “control agencies” are the paradigmatic institutions of horizontal accountability. As state institutions with delimited power and jurisdiction, national, regional and local governments are often grouped with other state institutions of horizontal accountability. Effective horizontal accountability is not the product of occasional prosecutions, but of networks of institutions that include at the top courts committed to the ROL and to holding institutions and individuals (including lawyers, prosecutors and judges) accountable.

Horizontal accountability demands institutions that are legally enabled and empowered, and factually willing and able, to take meaningful actions in response to the acts and omissions of state institutions and agents that violate applicable laws and standards of conduct. These controls run from oversight, public disclosure, investigations and hearings, reprimand, demotion (broadly defined to include reduction of compensation, budgets, jurisdiction, and authority to act), imposition of additional controls, removal from office (through elections, impeachment, or dismissal), fines, prosecution and imprisonment.

“Checks and balances,” “responsibility,” and “answerability” are near synonymous terms which are essentially defined through each other. To be accountable or answerable means that someone has the power and capacity to oversee and impose sanctions of some kind when applicable standards are breached by the institution or agent. Accountability without effective remedies is a truncated form of accountability. Accountability requires transparency because answerability implies the requirement that agents disclose relevant information, explain their actions, and render an account for the use of the authority, discretion and resources entrusted to them.

Vertical accountability originates from actors outside the state and consists of checks and balances on state actors within all three branches of government and at national, regional and local levels. Representative institutions and processes of vertical accountability include the electorate (free and fair elections), political parties, the media, NGOs (including trade unions, professional and business associations, and religious institutions), and international donors. Civil society and other institutions of vertical accountability influence horizontal accountability in two main ways: directly, by encouraging and demanding effective institutional checks and balances within the state; and indirectly, by strengthening the institutions of vertical accountability that underpin them such as free and fair elections and an independent media.

To sum up, principal-agent theory confirms that ethical, well-informed and balanced governance requires institutions of horizontal and vertical accountability that compel genuine transparency and accountability so as to check and limit the power and discretion of officials. Strong internal and external oversight and controls deepen the professional values of institutions and officials. Horizontal and vertical assessment, monitoring and reporting and advocacy for reform all feed into this dynamic of transparency and accountability.

8.0 Conclusions and Recommendations

If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place, oblige it to control itself.”

“The Structure of the Government must Furnish Proper Checks and Balances between the Different Departments,” The Federalist Papers #51 (1787-1789)

The assessment team groups the most significant drivers of corruption in Armenia into the following four categories:

- (1) Public and private sector institutions operate in an environment of low transparency and accountability.
- (2) Perverse public-private relationships plague the public sector and public sector reforms are incomplete.
- (3) There is no articulated common vision of Armenia’s future competitive ‘niche’ in the global economy on which to base a consensus for reform.
- (4) Donors are part of the problem and the solution.

8.1 Public and Private Sector Institutions Operate in an Environment of Low Transparency and Accountability

Corruption-prone institutions operate in an environment of low transparency and accountability. Armenia lacks effective horizontal and vertical institutions of accountability that coalesce to create real checks and balances within and among the branches of government. Weak legislative and judicial branches of government juxtaposed with an overly strong presidency and weak civil society institutions, including political parties and media, form the core of the problem that must be addressed.

If corruption is to be controlled and integrity advanced in the public and private sectors in Armenia, moral crusades and the enactment of more and more laws alone will not get the job done. To be sure, campaigns to decrease the public’s tolerance for corruption in ways that lead to changed personal behavior are important, as are laws that criminalize bribery, conflict of interest, misuse of public assets and other forms of corruption. However Armenia requires far more—nothing less than comprehensive reform that creates multiple and reinforcing institutions with the capacity and incentives to carry out their designated responsibilities. For citizens to develop confidence in public and private sector institutions, it is essential that all such institutions be characterized by actual and perceived transparency and accountability.

One of the most important challenges related to the fate and quality of democracy in Armenia is how to build more effective implementing and supporting institutions of accountability. Where government commitment is present, the international donor community should be prepared to provide the GOAM with the financial and technical assistance needed to supplement Armenia’s own resources and genuine efforts to strengthen horizontal accountability. While there is no

substitute for political will and the commitment of domestic resources, capacity building will require targeted and sustained technical assistance.

To buttress and catalyze the GOAM's own efforts, international donors must first serve as instruments of vertical accountability themselves. This begins with the donors acting as models of transparency and accountability and demanding transparency and accountability in the governmental and nongovernmental programs, projects and activities they support. Moreover, donors should strengthen other institutions of vertical accountability that characterize the external environment so as to build and sustain increased demand for credible state institutions of horizontal accountability. In sequencing reforms, generating the incentives to put effective institutions of horizontal and vertical accountability in place should take precedence over less compelling matters.

Recommendations

A. Strengthen Institutions of Horizontal Accountability

Until and unless constitutional reform is undertaken, the imbalance of power among the three branches of government will favor a strong and intrusive presidency. In effect, the executive branch in Armenia is characterized by a relatively weak government (prime minister and appointed ministers) and an overly strong presidency. The president forms and can dismiss the government, and checks from the judiciary, the National Assembly, and the supreme audit institution are weak and inadequate.

The most significant check on the president is of course the electorate—the power of a direct election. As discussed in the Rule of Law segment of this report, proposed constitutional amendments would do much to remedy the problems of excessive presidential power. A national referendum to amend the Constitution is under discussion but so far not scheduled. If this referendum is not held, the lack of institutional checks and balances in the public sector will remain a significant structural obstacle to improving effective horizontal accountability and combating corruption.

The following is the assessment team's priority order for institutions of horizontal accountability that could benefit from targeted technical assistance by USAID, in concert with other members of the international donor community.

1. Strengthen the Judiciary

First, as indicated in prior sections of this report, the assessment team found serious deficiencies in the Armenian justice system. Those very institutions responsible for the ROL are themselves corrupted by, *inter alia*, politicization of judicial decisions, bribery in the courts and the police, and even manipulation of the entry and grading policies in the state law school.

The judiciary is the most important institution of horizontal accountability. All other institutions ultimately depend on judges to be accountable to and enforce the ROL. The judiciary should check the executive and legislative branches, as well as itself, and be accountable first and

foremost to the Constitution. Recommended approaches for strengthening judicial and legal institutions are presented in the Rule of Law segment of this report.

2. Strengthen the National Assembly's Capacity to Function More Effectively in Armenia's Constitutional System of Checks and Balances

The constitutional separation of powers embodied in the Armenian constitution ensures that the National Assembly offers very little formal check on the presidency. The government and the executive are not synonymous in Armenia. The president is directly elected by citizens while the government (the prime minister and appointed ministers) is responsible, in theory, to the National Assembly through the risk of a no-confidence vote. The present budget process, however, unduly favors the government rather than the National Assembly.

Technical assistance related to strengthening the National Assembly as an institution of horizontal accountability should focus on three related components:

- (a) Strengthen the role of the National Assembly in the overall budgetary process. A set of specific measures is set out in the Final Report of the Expert Group.
- (b) Strengthen the capacity of the core, professional staff of the National Assembly. USAID has provided needed technical assistance in this area and as one altruistic member of Parliament advised, "To help Parliament perform more effectively, donors should provide technical assistance to our core staff. Donor dollars should not be spent on more European study tours for members of Parliament."
- (c) Strengthen the National Assembly's supreme audit institution, the Chamber of Control.

3. Strengthen Armenia's Supreme Audit Institution, the Chamber of Control

The Chamber of Control is at present a weak institution of external control. The chairman does not have the independence and stature associated with the head of effective supreme audit institutions elsewhere in the world. The Chamber is subject to political influence which undermines its inclination and ability to take the government to task over implementation of the budget. Moreover, in the event that the audit findings of the Chamber allege irregularities, it lacks recourse to effective mechanisms by which to enforce change.

Acting in cooperation with other USG agencies and donors such as the World Bank, USAID should promote reform efforts aimed at making the Chamber of Control an effective supreme audit institution with the requisite independence, legal authority and capacity to carry out its oversight and control functions. This should begin with a comprehensive assessment of deficiencies in the legal framework that includes an analysis of the *de facto* political influences that affect the independence and credibility of the Chamber. Additionally, an assessment of institutional capacity will undoubtedly reveal deep deficiencies that call for an institutional development plan, training and other technical assistance.

The goal of assistance in this arena should be viewed as an integral component of increasing financial transparency and accountability in the public sector. This begins with the budget

process and includes oversight and audit of public procurement expenditures for goods, construction and services as well as management, use and disposition of state property and other assets.

4. Build on the Initial Success Experienced in Reforming Public Procurement

As noted earlier in this report, USAID has been instrumental in promoting public procurement reform in Armenia. Public expenditures for goods, construction and services require transparency and accountability if corruption is to be deterred and value for money enshrined as one of the pillars of an open and competitive public procurement system. Public officials in the state procurement agency have demonstrated genuine commitment to reform and have requested additional technical assistance. The World Bank is conducting an assessment of Armenia's public procurement regime. The final report is expected before the end of the current calendar year. The findings set out in the World Bank assessment report as well as the recommendations outlined in the Expert Group's Final Report should be taken into account in designing and implementing follow-on technical assistance in the field of public procurement.

5. Support Devolution of Authority and Resources from the Central Government to Local Government

As noted in Section 7.2.2, Horizontal and Vertical Accountability, regional and local governments are often grouped with other state institutions of horizontal accountability. Fiscal and political authority is very centralized in Armenia. One strategic approach to check and balance the disproportionate monopoly power of the central government and executive over decision making and allocation of public goods, broadly defined, is to devolve authority and resources to local governments primarily and to regional governments, secondarily. The relative weak ability of Armenian local government to check and balance the power of the central government is evident when one considers that approximately 40 percent or more of Armenia's population lives in Yerevan yet citizens are deprived of the ability to elect their own mayor. As the assessment team was informed, the prospect of sharing power and resources with a popularly elected representative of 1.2 million citizens heading an empowered local government unit is anathema to the central government and its power ministries.

According to the World Bank, relationships among the deconcentrated offices of national ministries, the government-appointed marzpet, and the self-governing community governments have yet to crystallize. There appears to be significant variation between regions, with substantial confusion of responsibilities. The Bank has suggested that strengthening checks on the central government executive from the community level can be done over time by gradually developing the capacity of local governments and devolving to the local level more functions with the required resources.

A word of caution is order. Corruption is no stranger to local governmental units in Armenia. To the extent that USAID supports devolution of authority and resources to the local level, it should tie its support to arrangements that bring greater transparency and accountability along with increased authority and resources.

As part of its suggested policy matrix for an A/C plan, the Expert Group compiled a specific set of local government-related reforms and measures that could strengthen local government vis-à-vis the central government and reduce the risk of corruption. As part of its local government activity and A/C initiatives, USAID/Armenia should first convene a forum of interested stakeholders to discuss the recommendations of the Expert Group and address the role that local government can play in combating corruption within the central government as well as within its own specific spheres of activity at the community level. Next steps and an action plan should emerge from this process. Realistic expectations are necessary. Although it is feasible to bring some governmental activities closer to the people and make some dents in the power of the central government, Armenia's central government will continue to dominate relatively weak and poor local government units in the foreseeable future. But whatever USAID can do to support grass roots democracy and participation in government at the local level, the resources expended merit the risk and benefits.

B. Strengthen Institutions of Vertical Accountability

To successfully combat corruption in Armenia, political competition is needed every bit as much, if not more, than competition in the private sector. Political competition is the lifeline of democracy and is essential to combating corruption and promoting integrity.

Constitutional amendments can affect the balance of power among the branches of government and hence contribute to greater horizontal accountability such as creating a framework for a more independent judiciary. Independent media and mature political parties can package and present objective policy and value choices to the citizens. Similarly, free and fair elections characterized by real competition among candidates are paradigmatic instruments of vertical accountability.

Ongoing USAID support for election commissions, voter education, independent media and political parties contributes to the introduction of much needed competition for ideas in Armenia. But the current level of underdevelopment of political parties remains a severe problem for the formation of accountable government. There are over 80 parties in Armenia, showing little capacity to organize or discipline their membership around agreed-upon policies. Likewise, self-censorship and outright harassment of the media, due to their vulnerability and dependence on sponsors for financial support, severely diminishes the role the media can play as an instrument of vertical accountability.

Achieving an international standard of 'free and fair' in the parliamentary and presidential election would be an important and immediate demonstration of the GOAM's political will for overall reform and contribute to building the much-needed citizens' trust and confidence in governmental institutions that corruption has eroded. Achieving higher levels of voter participation and reducing flagrant examples of bribery, manipulation and ineptness at the polls would help combat cynicism and apathy in the general public.

This election period offers an immediate opportunity to build a key element of vertical accountability. Therefore it is important to maximize the impact of ongoing assistance through improved cooperation among implementers, to intensify efforts to bring visibility and importance to the elections, and to demonstrate increased international scrutiny of government conduct

during the election period. The assessment team recommends a strategic USG focus on elections in the coming months and spells out a three-tiered approach to enhancing and coordinating election assistance in greater detail later in this report.

Third Sector development is another requisite building block of vertical accountability. Civil society is weak and relatively ineffective in playing its rightful watchdog role in Armenia. While the number of NGOs is large and growing, as a whole these institutions still lack capacity to advocate on behalf of citizens or engage in productive dialogue with the public sector. There is little effective sector leadership, inadequate focus on clients and results, and poor understanding of merit-based competition—resulting in declining credibility for NGOs in the public eye. Think tanks and policy analysis organizations are few and far between, and are generally more capable of conducting research than disseminating and utilizing the findings to advance a policy agenda. Coalition building for strategic partnership is in its infancy. Unequal geographic distribution of financial resources by donors who have favored NGOs in the capital over those outside has contributed to the problem.

Future USAID efforts to assist Armenia’s civil society organizations in becoming more effective institutions of vertical accountability will require a more strategic approach to NGO strengthening, one that acknowledges the deficiencies noted above and builds capacity in the areas outlined. Additionally USAID should consider increasing assistance to heretofore under-resourced target groups, such as youth, business/professional associations, Internet users, Marz-level NGO coalitions, community and residential groups, local government watchdogs, returning trainees and other alumni groups, in order to broaden the base for effective citizen action and leadership in Armenian society.

8.2 Perverse Public-Private Relationships Plague the Public Sector and Public Sector Reforms are Incomplete

The problem and prevalence of state capture or grand corruption in Armenia is described in Section 5 of this report. As discussed above (Section 7, *Reasonable Expectations*), in the absence of genuine government commitment, corruption by high-level officials is extremely difficult to combat because the beneficiaries of corruption—political and economic elites—have little incentive to alter the status quo. Often they control the institutions of horizontal accountability, disenfranchise the institutions of vertical accountability, or simply keep these control institutions weak. Pressure from the outside is necessary to undo state capture.

The Final Report of the Anti-Corruption Experts Group states, “If misuse of public office for private gain is the accepted definition of corruption, then almost the majority of the public sector of Armenia can be considered to varying degrees corrupt.” The problem of fused public and private roles is embedded in historical, political, and economic factors, and also psychological and intellectual ones. There remains, ten or more years into the transition, widespread societal misunderstanding of, for example, how to separate one’s own “interest” from that of the state.

From an A/C perspective, it is essential that the environment in Armenia change with respect to public-private relationships and in particular prevention, avoidance and disclosure of conflicts of interests. In Armenia, this is particularly true in the case of transactions between central

government institutions and public officials and private businesses. To create public and private environments characterized by transparency and accountability, improvements in public sector standards of conduct, corporate ethics, public sector governance and corporate governance must march hand in hand. In the private sector context, this includes not only more and better financial reporting and disclosure, but also access to and revelation of complete and credible information about who owns joint stock companies and who inside and outside of government controls the companies that receive government contracts, concessions, import licenses and the like. In addition to legislative and institutional changes, progress in the direction of greater transparency and accountability will require ongoing investment in training and public awareness as well as close collaboration with business associations, educational institutions, courts, and the general public. To improve shareholder rights and the ability of companies to obtain commercial financing, corporate governance can be addressed through activities based on application of the OECD Principles of Corporate Governance, international accounting standards, company law, securities law and other regulatory frameworks that promote access to and disclosure of material information.

The World Bank and the British government have embarked on a comprehensive five-year public sector reform program that includes a new legal framework for the civil service and the introduction of modern personnel management concepts and systems as well as enhancing policy formulation and strategic planning capability. These are important efforts and they are critical steps in the overall reform process in Armenia but in relation to the extent of state capture in Armenia today, they fall into the category of necessary but not sufficient.

However successful these public sector reform activities may be, they are largely directed at modernizing the systems and procedures governing the technocratic or “career” cadres of public workers. There remains a top tier of elected or appointed officials who are outside the civil service and whose actions must be transparent and whose missteps must be subject to real sanctions. The recently enacted Financial Disclosure Law that requires the very group with the greatest opportunity to engage in grand corruption to publish their personal wealth and income, has produced more cynicism than accountability—because there are no investigative or enforcement powers to make the law effective. Similarly, efforts to introduce codes of conduct for judges, lawyers, police and the myriad others with public responsibilities, unless supported by extensive training and accompanied by real teeth—clearly identified penalties and disciplinary processes—will produce little additional accountability, if any, among those target groups.

Recommendations

A. Support Islands of Integrity in the Public Sector

Institutional reform in the public sector will be given a major impetus by the Public Sector Reform Program planned by the World Bank, which will target key elements of public administration for pilot integrity-building activities. These may include incorporation of accountability systems, layering or simplification of operations to reduce error, and training to change the attitudes and beliefs of the personnel. However, there will remain a substantial portion of public sector activity which the World Bank program is not designed to affect.

Moreover, in Armenia today there may be public institutions so steeped in corruption-prone historical structures and cultures, that attempts to counteract or reduce these influences are essentially ineffectual. In these cases, a better option might be to eliminate or restructure the institution altogether, obtain a “fresh start,” and create a completely new organization. This approach is referred to as creating an “island of integrity” and there is a body of implementation experience to draw from in the global A/C literature if this road is chosen.

The concept of “islands of integrity” was first promoted by Transparency International (TI) and is based on two commonly expressed concerns:

- the notion that many of the pressures to engage in corruption arise from concerns that competitors will do so; and
- the understanding that, where corruption is pervasive, it may not be feasible to attack it everywhere at once.

The theory is that, if an “island of integrity” can be created by ensuring that a particular agency, department, segment of government or transaction is not corrupt, competitors can be secure in the knowledge that refraining from corrupt practices themselves will not put them at a competitive disadvantage. In practical terms, the idea is that when everyone pays bribes, no one wants to be the first to stop and end up empty handed. TI’s “island of integrity” approach is being developed in areas of government activity which are particularly susceptible to corruption (e.g., revenue collection). In such cases it can be feasible to hive off the department concerned, fence it off from other elements in the public service, pay the staff properly, and have the officials raise their standards.⁵

A similar approach has been introduced in several CEE countries by the NGO, Integra, with USAID support. This program focuses not on public offices but on small, family-owned businesses. It is based on the notion that family-owned businesses are often motivated by the desire to sustain the business for the next generation and to preserve the family name, and are therefore more resistant to corrupt practices. Workshops to build solidarity, offer support and technical training are provided for this community of businesses who voluntarily work together to solve mutual problems related to corruption in their environment.

USAID could support, either alone or in collaboration with other donor efforts, a nontraditional approach to reform by identifying a single organizational unit of the GOAM with which to work, and build—from the ground up—an entirely new structure that is a model for others, and represents a first pillar of a new national integrity system. While traffic police reform is likely to be a popular first candidate for this approach, it may be beyond the scope of USAID. However, a very promising counterpart might be the government procurement office, building upon on USAID’s successful legal reform and training assistance referred to earlier in this report. Few activities create greater temptations or offer more opportunities for corruption than public sector procurement. An added benefit of choosing this government sector as an “island” is that the nexus with the private sector provided by procurement activities would mean the impact of reform would also flow to the businesses doing business with the government.

⁵ UN Anti-Corruption Tool Kit, Version 4, 11 November 2002, page 126.

“The field of public procurement has been a battleground for corruption fighters. It is in public procurement that most of the “grand corruption” occurs with much of the damage visibly inflicted upon the development process in poorer countries and countries in transition. Although initially there were skeptics who fought the “Islands of Integrity” approach successes are increasingly being recognized. “Islands of Integrity” is a process in which voluntary agreements are made, involving bidders and the government, to restrict opportunities for corruption in a particular project. The use being made of the Internet for public procurement by the city of Seoul and in Mexico is likewise promising....”

“Integrity pacts perform a similar function to Islands of Integrity, but are focused on specific contracts or transactions rather than on ongoing institutional arrangements. Those involved in a specific process such as the bidding for a government contract are asked to enter into an “integrity pact” in which everyone agrees to observe specified standards of behaviour and/or not to engage in corrupt practices. Such pacts can be of a contractual nature, and could be linked to the principal contract, permitting litigation attacks on it if one of the parties is found to have breached the integrity pact.”⁶

Other possible “island of integrity” institutional candidates might be the election commission, the economic court, the supreme audit institution, licensing or permit offices, state property management or any of the host of priority public institutions the Anti-Corruption Experts Group identified for reform in their Final Report. This approach requires a substantial commitment of resources and the active support of significant political leaders to succeed, but the assessment team believes these are conceivably attainable even in the current Armenian environment.

Furthermore, the concept of “integrity pacts” should be explored for possible application generally in USAID/Armenia’s assistance agreements with the GOAM. For example, MOUs or Results Packages could be negotiated to include voluntary agreements on standards and norms for preventing corruption. If USAID were successful in achieving agreement with Armenian counterparts on development of effective “integrity pacts” or “transparency pacts” this could be a model for other international donors in the future. And a further application of the concept of these types of voluntary pacts might be the local NGOs receiving grant assistance from USAID. At a minimum, the very process of development of consensus and agreement on standards would be an opportunity to highlight the importance of A/C measures and provide educational input to our institution-building efforts in the Third Sector.

B. Strengthen Public Policy Analysis Capacity in the Private Sector

Both the Anti-Corruption Experts Group and the World Bank Public Sector Reform Team point to an urgent need to strengthen professional policy formulation capacity in Armenia. As is the case in most post-Soviet governments, public policy research, analysis and development is an underdeveloped art, and policymaking more often takes the form of imposing political ideology arbitrarily and opaquely from the top, than through an organic governmental process. This not only contributes to the perception of corruption, when policymaking is limited to a few unaccountable actors who may or may not have the public good in mind—it inevitably diminishes the overall quality of public policy since it is disconnected from the constituents it is

⁶ *Op.Cit*, pages 131-133.

designed to affect. The World Bank Public Sector Reform Program addresses this deficit in its pilot ministries. Moreover, USAID should be aware that the important legal drafting assistance currently being offered by a some implementing partners may inadvertently contribute to the problem of weak policy development capacity in the GOAM. If the implementers continue to support and participate in a closed process that does not involve the multiplicity of local stakeholders, the GOAM tendency to centralize policy development and legal drafting will only be reinforced.

There is also a role for the private sector in public policymaking, which is also clearly lacking in Armenia today. This issue was the central theme of a case study on public policy formulation in Armenia published recently by an international consultant.⁷ The author found there is “no coherent strategy from the state towards public involvement in policymaking, neither are there any clear regulations as to how to handle public initiatives.” NGOs on the other hand are increasingly interested in shaping policy at all levels, and their capacity at least in research and analysis is growing. The impact of this research, however, is still limited. The net effect of research that is overly theoretical, insufficiently concrete and lacking in practical applicability, and poorly communicated to the public and the state, is that policy is not implemented. There are a number of capable policy-oriented think tanks, research organizations and academic units which would be more effective if endowed with skills in packaging and promoting their recommendations, and lobbying, advocating and mobilizing public support for their findings. This is an area where USAID/Armenia’s technical assistance could be beneficial.

8.3 There is No Articulated Common Vision of Armenia’s Future Competitive ‘Niche’ in the Global Economy on Which to Base a Consensus for Reform

Given an increasingly global economy, corruption in Armenia must be understood not only in the context of its immediate harm to the Armenian society but also in terms of the longer-term detrimental impact corruption has on Armenia’s international reputation and future competitiveness in global markets. A national consensus on Armenia’s future as a successful participant in the global economy is indispensable to inspiring change in societal norms and values, devising new formal and informal rules, and implementing effective measures to combat corruption.

Global capital flows towards countries, regardless of location, that are characterized by transparent and accountable public and private sector institutions governed by professional and accountable officials. In a highly competitive global marketplace, sophisticated global investors examine the countries and businesses in which they invest to assess if they suffer from weak governance or benefit from strong. Increasingly, global investors look to how well countries and businesses promote openness, full disclosure and fair dealings and other principles of transparency, accountability and sound governance as a litmus test of investment potential.

However, it should also be noted that inherent in the globalization trend is a dangerous counter pressure, and those countries that do not meet the transparency test may find themselves relegated to membership in another type of club. Globalization increases pressure to compete,

⁷ Tobias Ljungvall, “Public Policy in Southern Caucasus, Case Study on Armenia,” Forum Syd for the Eurasia Foundation, July 2002.

and with it comes the temptation to chase after questionable businesses, even illicit ones. An unfortunate outcome of globalization is those countries consciously or unconsciously pursuing their “niche” in the global marketplace by developing their “brand” as, for example, the world’s capital of money laundering, illegal drugs or trafficking in humans. These countries turn “competitive advantage” on its head and build their reputation as havens from international standards and rules in order to attract a certain clientele. The sustainability of this strategy or its impact on poverty reduction is highly suspect.

USAID/Armenia’s assistance is based on the premise that broad-based economic growth is the most effective means of bringing poor, disadvantaged and marginalized groups into the mainstream of the economy. Increasing Armenia’s country competitiveness is key to sustainable economic growth and reduced poverty. Building Armenia’s competitive advantage must begin not only with a vision of Armenia’s future niche in the global marketplace, but also with a consensus and determination to get two things right: Armenia’s macroeconomic enabling environment, and the microeconomic foundations for growth. The former calls for credible, transparent and accountable public sector institutions; ethical and effective public officials who separate private sector interests from their public sector responsibilities; and institutionalization of the ROL. Getting the microeconomic foundations right calls for robust industries and businesses that think and act in competitive and ethical ways rather than relying on public officials and the machinery of state to create and protect monopolies, oligopolies and other perverse arrangements inconsistent with free, open and fair markets. Key building blocks for an enabling environment that promotes country competitiveness include not only peace and security, but also personal and economic freedom, good governance, the ROL, public and private probity, sound macroeconomic and fiscal policies, access to financial services, realizable property and contract rights, and effective market augmenting institutions.

Recommendations

A. Encourage New Approaches to Agenda Setting

The literature on countries that have achieved global competitive advantage concludes that “globalization has its own rules and logic that today directly or indirectly influence the politics, environment, geopolitics and economics of virtually every country in the world.”⁸ According to this body of knowledge, Armenia will have to “produce goods and services that meet the test of international markets while citizens earn a standard of living that is both rising and sustainable over the long run...”⁹ in order to thrive in the global economy.

The emphasis on maintaining a good reputation to attract investors, competing by adding value, and producing high quality goods and services is where country competitiveness theory intersects with an imperative to promote transparency and accountability and reduce corruption. Moreover, a drive toward competitiveness can offer leaders an opportunity to package reforms in certain ways, and collaborate in new ways that amount to a “fresh” approach for partnership and innovation that may invigorate the country.

⁸ Thomas L. Friedman, *The Lexus and the Olive Tree*, Anchor Books, New York, 2000, page ix.

⁹ Howard Rosen, US Competitiveness Council, in his speech to USAID Conference, “Building Competitive Advantage in Nations,” Budapest, Hungary, March 26, 2002.

Armenia could certainly use a fresh approach. Just taking one recent example, the unsuccessful attempt to achieve an inclusive process in developing a national A/C strategy, it is clear that partnership and collaboration between sectors of society is, so far, difficult, if not impossible to achieve. While it not the role of USAID or any other donor to impose cooperation, communication or a particular development model upon a country, it is possible to provide opportunities for discussion and debate, in structured and nonpartisan environments, and to introduce concepts and ideas on which consensus and new visions can be built.

Generating public interest in and discussions of country competitiveness can offer a new entry point for agenda setting and reform. Couching A/C in the terms of achieving Armenia's competitive advantage, in effect, provides USAID a new tool for elevating the level of debate, for raising awareness across the public and private sector, and for energizing more effective A/C action. Linking a strategy for combating corruption to the goal of enhancing the country's image, offers a unifying framework for analyzing and exposing the damaging impact of high current levels of corruption to the nation's hopes for future economic and social advancement. Armenians need an infusion of hope. Promoting A/C in relation to the urgency of becoming more open and transparent to attract foreign and generate domestic investment, which in turn will alleviate poverty, retain the youth and draw back the émigrés, is a positive way to bring negative issues out in the open, and lead to more productive national dialogue.

B. Bring New Parties to Dialogue About Armenia's Future

Promoting a national discussion of Armenia's future will benefit from reaching out beyond the usual group of insiders who dominate in the policy arena. This will involve identifying and including new reform champions, both individuals and institutions, in the public and private sector, who have a stake in the country's economic and political future. It will involve convening people in groups that may not normally meet or work together, for example combining labor, business leaders, academics and public officials in a single forum, whose views while antithetical in some cases, will be critical to building consensus and sponsoring new models for implementing reforms such as councils, networks and clusters. It may involve identifying and supporting early adopters of reform, clean judges, clean parliamentarians, clean businessmen, known innovators and risk takers with experience and confidence on which to build fresh approaches. It may also involve engaging members of the Armenian diaspora in new ways.

One of the things USAID does best is to bring people together who otherwise would not interact or even speak to each other. There are countless examples of USAID acting as a convener, at all levels of society, providing the aegis under which parties meet and begin to relate to each other face to face for the first time. Participant Training Programs are often designed for just this purpose—to get individuals together in a training setting, or just riding on a bus, thereby creating a basis for future professional collaboration and mutual support. USAID has experience in Central America and Africa supporting national reconciliation, post war resettlement and decommissioning, and in tripartite trade union discussions, that can serve as models for developing approaches and effective strategies for achieving a national dialogue and consensus.

J. E. Austin is a contractor with extensive experience implementing USAID competitiveness programs around the world. Austin noted in a recently completed review of experience that several key constraints to successful competitiveness initiatives including poor workforce development, poor political leadership, cultural factors that isolate countries from world markets, and even USAID 's own administrative procedures place certain delays and restrictions on the provision of technical assistance. Regarding workforce constraints, USAID commonly found that Ministries of Education are traditional, risk averse and reluctant to overhaul curriculum. An approach taken in Egypt and Sri Lanka brought industry leaders in contact with educational leaders, groups who traditionally had little contact, in order to discuss and better understand the skill gaps and deficiencies that constrained competitiveness. Austin also found that "the leading constraint to competitiveness at the level of a nation, industry cluster, or firm, is the mindset of the leadership. For this reason competitiveness initiatives seek to change mindsets first and then work on technical implementation. When leaders believe that competitiveness is synonymous with low-wages, cheap raw materials, and a depreciated currency, efforts must be made at the outset to inculcate appropriate definitions." This is an educational process USAID can support.

USAID/Armenia's ongoing portfolio includes numerous useful activities and experience on which to build, ranging from citizen action and local development support, to dialogue with the Armenian Trade and Development Agency, to promoting information technology and Internet user's groups. Unfortunately the team was unable to meet with the Trade and Development Agency during their visit. However, based on interviews and background information available, the team recommends further exploration of this organization as one potential partner/sponsor of a national "visioning" exercise and perhaps as a counterpart for a discreet competitiveness initiative. Such an exercise might provide an opportunity to, among other things, highlight the need for change in the national outlook, introduce "new paradigms, new tools and new approaches" to Armenia's transition, including making public the explicit link between combating corruption and enhancing the country's economic future.¹⁰

It is imperative to get across to the citizens in Armenia that corruption has held the country back and will continue to do so unless government and civil society come together to effect deep change in the way government institutions and business act and interact. Getting that message across will be easier in the context of an inclusive nonpartisan and strategic approach that links the fight against corruption to a hopeful vision of the country's future prospects in the global economy. Generating structured opportunities to introduce these ideas and provide for their airing in safe and productive arenas would be very useful role for USAID, in concert with others, to play.

8.4 Donors are Part of the Problem and the Solution

There is some indication that the international donor community, despite intentions to the contrary, may actually be complicating, if not exacerbating Armenia's problems with corruption. The massive scale of assistance funding being provided to Armenia (the highest level per capita in the world), if not accompanied by more effective systems of management, supervision and accountability, risks placing the international community in the role of enabling corruption. It is beyond the scope of this report to address this issue in detail. However, the assessment team

¹⁰ J. E Austin and Associates, *Report on Competitiveness*, 2002

concluded the lack of effective, substantive policy coordination among the international donors, and the operating modes and implementation mechanisms employed by some donor agencies are vulnerabilities that themselves need substantial attention if overall efforts to combat corruption in Armenia are to be successful.

Real international donor coordination is critical to the reform process in Armenia, but it cannot take place at monthly meetings for “show and tell.” While these meetings serve an important informational purpose, there is a danger of believing that the purpose served is effective assistance coordination. The format for such meetings does not allow for meaningful substantive exchange or debate on issues about which there may not be common agreement. A case in point is an example from the donor coordination meeting attended by the assessment team, in which a donor representative reported “a concern with the lack of transparency in the GOAM privatization process and the continued problems with advance tax payments” and then went on to announce the transfer of the next tranche of Euro 5.5 million by the end of the year anyway, and a plan for “tougher conditionality next year.” This statement went unchallenged or even commented upon by the participants.

Considerable effort has been made to coordinate A/C approaches better among the international donors, and particularly the OSCE and USAID have played major leadership roles in the overall process and in the working groups. There is, however, considerably more that needs to be done. In the arena of combating corruption it starts with the recognition that the donors may have differing standards of conduct in their own internal administrative, procurement, and management systems which may be sending mixed signals to the counterparts. They must do a better job of setting a correct example and “modeling integrity” particularly in contracting and procurement. Donors must also come to grips with their own reluctance to raise corruption to a high priority in discussions with counterparts, due in part to internal pressures to expend funds and meet deadlines. A recent study of corruption in Macedonia by the International Crisis Group outlines this problem. It concludes that the donors, operating on the belief that confronting the government or pressuring too hard on the corruption issue would be counterproductive, put ineffective programs in place thereby becoming unwitting enablers of massive corruption.

To air these issues and to debate the appropriateness of specific terms and conditions set by individual donors in the context of their grant and loan programs will require a level of open and honest discussion that so far takes place in private, individual meetings, if at all. As stated above, this is a sensitive process, one which falls outside the mandate of the assessment team to address. Further exploration of these issues is encouraged—in light of the fact that the international donors are such important institutions of vertical accountability in Armenia. The point here is that donors must provide real leadership to the Armenians to reduce corruption. This means going beyond paying lip service to the corruption issue, taking a consistent approach, and placing a priority on deeds not words—using real carrots and real sticks. The following suggestions are presented for USAID follow-up.

Recommendations

A. Set the Correct Example

To play a proper role as an institution of vertical accountability USAID/Armenia, of course, must remain vigilant in maintaining the highest possible standards of stewardship of US resources across all program operations. The “way we do business” is to refuse to engage in bribery or ignore it when we see it, to require free and open competition in acquisitions and assistance, and to hire and manage personnel on merit. Effective systems of enforcement of these standards operate at all levels of the US government. These principles not only guide the internal management of USAID, but also serve to confer upon counterparts a picture of the underlying norms and ethics of US public administration and public service, and a value system to emulate.

Moreover, USAID’s own internal operating procedures and control systems, which are set forth in USG rules and regulations, offer some good models that can be exported to nongovernmental and governmental counterparts in a variety of ways. To illustrate, during the team’s visit the USAID Executive Office circulated supplementary Mission guidance for selection committees engaged in hiring local staff. This simple memorandum outlines procedures for avoiding actual or perceived conflict of interest, nepotism, discrimination or other non-merit-based hiring practices in eight bullets. Such guidance would be a useful model for NGO grantees in their hiring and it could be adapted for use by groups engaged in competitive grant making. The USAID Controller’s office also uses a checklist to review financial management systems (financial reporting, internal control and compliance) of organizations applying for funds. This checklist, while designed for internal use by USAID in assessing the strength and administrative capacity of potential grantees, is potentially a useful management tool for the grantees themselves. There are additional internal USAID resources that can be tapped for certain kinds of public sector management and administrative expertise, such as auditing and ethics training to assist counterparts build their own integrity systems. The offices of the USAID Inspector General and the General Counsel have provided technical assistance in these areas, for example. The general suggestion here is to encourage USAID/Armenia to be creative in finding ways to model and help incorporate USG internal standards of transparency and accountability in counterpart institutions.

B. Reach Consensus on a US Embassy-wide Strategic Approach

Just as it is important for the international donor community to act in mutually reinforcing ways in the fight against corruption, it is similarly important that the various elements of the USG present in Armenia take a strategic and unified approach to managing US A/C efforts. There are already mechanisms in place for coordinating assistance efforts within the Embassy country team, and these are important first steps. But again, there is more to be done. The US Embassy political/economic section is addressing targets of opportunity in law enforcement, and there are Treasury advisers providing assistance in the financial ministry. USAID’s activities have already been described in this report. What is missing is an Embassy-wide consensus on the priority to be placed on USG A/C measures and a common strategy to guide the efforts. The US Ambassador and other senior officers have important leadership roles to play and significant scope for influencing reform in Armenia. As the largest single bilateral donor of assistance, the

USG has significant resources to apply to development problems. The US can and should raise the visibility of corruption issues in policy dialogue at every possible opportunity and make the maximum use of program resources through a well-coordinated set of strategic interventions and activities.

C. Strengthen the Hand of Implementing Partners

USAID's implementing partners are well aware of both grand and petty corruption in Armenia and live with it on a day to day basis. The assessment team met with the majority of the contracted individuals operating in Armenia as Chiefs of Party or in similar roles. They provided numerous examples of bribery, conflict of interest, nepotism and abuse of power taken from the professional spheres in which they operate, both in the public and private sectors. At the same time, they were able to report how they successfully manage to produce program results.

The contradiction facing implementers in Armenia, namely, how to succeed in a technical arena, when the surrounding policy and political environment is infected with corruption, is resolved at least in part because of the level at which implementing partners operate. Most of USAID's activities involve support and advice at the technocratic level. The immediate counterpart individuals for USAID implementers are the bureaucratic tier of civil servants with more implementation responsibility than policymaking authority. The inputs from USAID implementers, the host of new procedures and systems that ultimately will allow for greater transparency and accountability, seemingly meet little resistance at this level. At times, however, powerful vested interests have posed serious obstacles to the implementation of USAID/Armenia activities, involving danger to individuals' personal security. These conflicts have so far been amenable to high-level intervention or protracted legal disputes where opposition was eventually worn down. And almost surprisingly, program results have eventually been achieved.

These and other insights provided by USAID's implementers offer much food for thought and invite much more in-depth analysis on which to base future approaches to combating corruption. USAID/Armenia has a wealth of experience and knowledge to draw from among the implementing partners and the assessment team recommends engaging them regularly in structured discussions—to learn from them and to develop ways to support and position them better in the fight against corruption.

9.0 Recommended USAID/Armenia Anti-Corruption Activities

9.1 Put the Report of the Anti-Corruption Strategy Expert Group to Use

The August 2002 Final Report prepared by the World Bank-funded Anti-Corruption Expert Group not only includes an informative analysis of the causes and types of corruption in Armenia, but also recommends priority A/C measures involving state entities, civil society and international organizations. The assessment team, while impressed with the overall quality of the strategy, noted there was considerable criticism from NGOs about the process of developing it. The team concluded that the World Bank grant's objective to ensure an inclusive process was not met. Although unfortunate, this is not fatal to the outcome.

The assessment team believes the report has significant value both in analytical terms and in a number of its specific recommendations. At a minimum there is considerable educational value in the report for those implementing partners currently engaged in assistance activities in the country. Many of the recommendations intersect with assistance areas that are the focus of USAID programs underway in public sector reform, including tax, financial sector reform, energy sector reform, justice sector reform as well as civil society strengthening. The report advances a number of specific technical solutions to corruption problems, the merits of which the many experts among USAID's implementing partners and grantees should be given an immediate opportunity to discuss, assess, and possibly support in the context of their own current or future work plans.

If the GOAM were to endorse the report in its current form, the most effective next step would be to quickly turn what is now the Final Report and Annex of Recommendations into a published National Anti-Corruption Strategy/Action Plan. The Action Plan should assign responsibilities and establish time horizons for completion of tasks, and a secretariat or other administrative body in the Office of the Government should be assigned to monitor and support the Action Plan's implementation.

At that point, the Office of the Government should make another, greater effort to include civil society organizations and additional representatives of other branches of government in the Strategy/Action Plan implementation process. Holding a "National Integrity Conference" or similar public event with joint sponsorship by the GOAM's interministerial Anti-Corruption Committee and NGOs, media, international donors and other public participants to launch the Strategy/Action plan in an open and transparent environment would raise awareness of the commitments made, put civil society in a better position to hold GOAM accountable for its actions, and perhaps open the door to greater partnership between the two.

The assessment team is under the impression there was a controversy among the experts in the group over whether to recommend the creation of a new Anti-Corruption Agency in the report, and if so, in what form. This contentious issue is not easily resolved. In worldwide experience, there are partisans on every side of this issue. The literature on combating corruption points to successful case examples in several countries, while at the same time raises concerns about the high cost, the potential for politicization, and the questionable long-term effectiveness of such bodies. Our strong recommendation to USAID/Armenia is to NOT let the debate over the form

and function of an Anti-Corruption Agency derail efforts to follow up on the report with meaningful implementation in the many other areas that it addresses. Much good work has been produced by the Experts Group and USAID can build on the Final Report immediately, in a variety of ways, even if the GOAM does not. Because it is not clear at the time of the completion of this assessment report (December 18, 2002) what use, if any, the GOAM will make of the Experts Group August 2002 Final Report, the team can only reiterate the recommendation made earlier that this Final Report contains a great deal of useful information—and even without official GOAM endorsement it provides an excellent blueprint for USAID and implementing partners to consider in designing further A/C activities.

9.2 Put the Center for Regional Development/Transparency International Public Opinion Survey to Use

In April-May 2002, USAID, OSCE and the British government supported a collaborative effort by CRD/TI Armenia, and the Armenian Civil Society Development Union and Development Network to conduct a national study of perceptions of corruption among households, businesses and public officials. The excellent report of the study was released in September 2002. The findings are not only rich and revealing, and deserving of review and analysis, they are also packaged attractively and informatively, and are translated in English to facilitate reaching a broad audience.

The results of the CRD/TI study have been referenced earlier in this report (see Section 7), and by the time this assessment report is completed, a public launching of the study may have already taken place. But the release of the CRD/TI study presents an immediate opportunity for USAID/Armenia to strengthen potentially key institutions of vertical accountability. USAID/Armenia should now build upon its initial investment in the NGO sponsors of the study and follow up the publication of the survey results with assistance to enable the NGOs to develop a public education strategy, disseminate the findings broadly, and use them as a point of departure for public review and debate of corruption problems. One of the persistent critiques of Armenian civil society “watchdog” organizations relates to their inability to apply the findings from social science research in a policy formulation process, or to use research for public education purposes, or to effectively advocate public policy positions. The NGOs could benefit from donor funding and technical assistance to build these skills and gain experience in the critical professional areas necessary for effective constituent representation and advocacy.

9.3 Increase Attention to Armenia’s 2002-2003 Elections

Armenia’s upcoming local, parliamentary and presidential elections, including a possible referendum on amending the Constitution, are important building blocks for democracy and good governance in Armenia. They represent an opportunity to increase citizen awareness of their rights and responsibilities in a free society. The elections also serve as an important litmus test of the GOAM’s commitment to modernization, both inside and outside of the country.

By intensifying its focus and improving coordination of activities that bear on the elections and the environment surrounding them, USAID/Armenia has an immediate entry point to combat corruption and increase transparency and accountability. Even if these elections present less than

optimal competition for ideas or real voter choice, and even if election outcomes lead to little actual change in political direction at this point in Armenia's transition, the conduct of the campaigns and the election process itself will be important indicators of progress and will be carefully watched. The inclusion of a referendum amending the Constitution would present the voters with a critical decision impacting the political direction of the country, even in the absence of significant candidate elections. The elections also present an excellent focal point and organizing theme around which civil society organizations can coalesce, learn to cooperate and build internal capacity if they so choose. Concerted, coordinated support from the international community could encourage them to do so.

Therefore, the assessment team suggests an intensification of election assistance coordination efforts at three levels. Recognizing that there are already frameworks in place to support cooperation and coordination among Yerevan-based international donors, these suggestions are made to complement or build on those structures.

First, the US Ambassador, perhaps in collaboration with the OSCE Ambassador, could convene a select group of peers informally to discuss and exchange views on their perspectives on election issues and their respective plans for election support and monitoring. This would help to publicly highlight the importance placed on the elections by the international community, early in the election period. Such a meeting, and periodic follow-up meetings of a similar nature, would serve to promote an intensified interest on the part of bilateral embassies and other international organizations present in Armenia, and encourage further cooperation on concrete election assistance activities at the working level.

At another level, the OSCE-led Donor Coordination Working Group on Elections could be encouraged to step up its activity, perhaps expanding its membership to incorporate additional representatives who are temporarily engaged in election assistance during this period, and meet more regularly but with a more detailed focus on joint planning and coordinating implementation of election-related assistance activities during the next six months. Local coalitions and groups looking for higher levels of support for their election programs may solicit funding from multiple donors and this working group could provide a forum for allocating international assistance resources transparently and fairly.

At the USAID Mission level, building upon the recently signed Memorandum of Understanding between USAID/Armenia and the Central Election Commission (CEC), which identifies election assistance activities and implementing partners, USAID/Armenia should intensify its own internal coordination efforts through weekly or biweekly meetings chaired by USAID senior management during the election period.

IFES, NDI, World Learning, AED, ABA/CEELI, Promedia, Internews, are all engaged in a multiplicity of election-related activities including voter education, training of judges, journalists, election administrators, observers and media monitors, support for the election commissions, sponsoring candidate debates and issue discussions, forums and discussions of the proposed constitutional amendments and providing technical and infrastructure support. These implementing partners also have considerable scope for providing topical grants to NGOs that may directly or indirectly address election issues. Regular meetings during the critical six-month

election period not only addresses the normal program management issues of stove-piping and duplication of effort, but will keep USAID/Armenia better informed of potential problems and sensitive issues that may arise in implementation. The regular meetings can include visitors and other individuals on a temporary basis as appropriate. Additional budgetary resources may also be necessary.

One important element of successful election assistance coordination at all levels is the need for a simple overarching goal or objective to give purpose to the effort. The idea is not to coordinate for coordination sake. Coordination of activities at the ambassadorial, donor organization, or USAID Mission level is only important in order to advance a shared agenda. “Achieving ‘free and fair’ elections,” or “improving voter turnout,” or “increasing youth participation” are all potential unifying themes. Leadership at each level of coordination can maintain the focus on the overall objective to maintain energy and commitment to the process.

9.4 Develop a Follow-on Rule of Law Activity

See earlier section (Section 4) on ROL recommendations.

9.5 Develop a Stand-Alone Anti-Corruption Activity

By concentrating resources, a stand-alone activity provides a USAID mission with a vehicle for elevating A/C to a higher and more visible priority. This is accomplished by allocating specific USAID partner financial and human resources to this crucial development topic. The assessment team recommends that USAID/Armenia give serious consideration to including a stand-alone A/C activity in its portfolio of Mission activities.

There is no single formula or model for designing and implementing a “stand-alone” A/C activity. In USAID/ Armenia a stand-alone A/C activity would complement and supplement the other DSRO and EREO activities that have implicit, if not explicit, A/C elements.

While generalizations are difficult to come by, a stand-alone activity will frequently include support for civil society A/C “watchdog” organizations and interventions intended to raise public awareness of the costs of corruption as well as understanding of its forms and patterns. Promoting the development, implementation and monitoring of national A/C strategies and action plans is another representative feature of stand-alone programs. See Boxes 9.1-9.3 below for representative stand-alone A/C activities in other USAID missions. The institutions in Armenia comparable to those targeted in Bulgaria’s Open Government Initiative are Armenia’s Supreme Audit Institution, the Chamber of Control, the State Procurement Agency, and the coalition of NGOs formed under the leadership of TI’s local chapter in Yerevan.

Box 9.1. USAID/Bulgaria's Stand-Alone Anti-Corruption Program: The "Open Government Initiative"

In June 2002, Bulgaria began implementing its new stand-alone A/C activity, the "Open Government Initiative (OGI)," following signing of an agreement in April 2002 between Bulgarian Prime Minister Simeon-Saxe-Coburg and USAID Administrator Andrew S. Natsios. The three-year, \$6.8 million program has two primary goals.

- ◆ The first goal of the OGI is to increase transparency and reduce opportunities for corruption in public administration. USAID/Bulgaria will provide technical and in-kind assistance to the Bulgarian government's A/C efforts, specifically those of Bulgaria's supreme audit institution, the National Audit Office, and the Public Procurement Directorate of the Council of Ministers. The project will develop the capabilities of the National Audit Office and the State Financial Control Office to perform internal and external audits and to adopt international standards for this work. USAID's implementing partner will also work with the Procurement Directorate and ministries to expand their on-line procurement capacities and design transparent rules for public procurements.
- ◆ The second goal of the OGI is to foster civil society's efforts to promote transparency, accountability and awareness of corruption through work with Coalition 2000, a well-known partnership of a number of Bulgarian NGOs aimed at combating corruption through a collaborative process with government institutions, media and the private sector. Coalition 2000's Corruption Monitoring Indices have become a widely recognized source of monitoring information. Drawing on this successful public-private partnership model, the Bulgarian government has recently unveiled a new National Anti-Corruption Strategy and Action Plan that acknowledges the critical importance of introducing "advanced standards of transparency and accountability" for Bulgaria's future democratization, thus laying the foundation for a coherent long-term policy for combating corruption.

Box 9.2. USAID/Ukraine Anti-Corruption Programs

From October 1996 to August 2000, USAID/Ukraine's A/C initiative applied Implementing Policy Change (IPC) participative approaches in implementing A/C strategies in Ukraine at the oblast and municipal levels in Donetsk, Lviv, and Kharkiv. By creating "Partnerships of Integrity" coalitions, USAID worked to coordinate public and private sector efforts at building accountability and transparency into government and business procedures. With a focus on building measures to *prevent* corruption, these coalitions have helped to foster a more favorable environment for investment and economic growth in a cooperative, rather than a confrontational, manner.

The technical approach extended over three primary phases—stakeholder assessment, mobilization, and follow-up implementation activities. In the stakeholder phase, the IPC project team visited the oblast and conducted focus groups with the major sectors of society affected by corruption. Involved sectors included city and oblast administration, business, the mass media, university and research institutes, associations, and NGOs. Based on these focus groups, a stakeholder analysis was developed that compared and contrasted the interests, objectives and perceived roles of each group in the fight against corruption.

In the mobilization phase, workshops involving all major stakeholder groups were conducted in order to develop action plans, which defined concrete initiatives of potential institutional, policy and legal reform.

Major successes in the implementation phase included:

- ◆ the creation of five Citizens Advocacy Offices which continue to serve as sources of free legal support for citizens and businesses with grievances about corrupt officials.;
- ◆ the formation of a national Coalition for Integrity made up of the three regional partnerships, which can work together to impact national policy directions;
- ◆ procedural simplification by the traffic police of Donetsk, intended to reduce the opportunities for bribe-taking;
- ◆ the establishment of a coordinating council headed by the Deputy Governor of Donetsk to address conflicts and arguments between businesses and the Tax Administration;
- ◆ the implementation of a single passes for border crossing;
- ◆ several educational pieces used for local education of citizens' rights, subjects including customs procedures, salary payments, arrests, court procedures, and code of ethics of public officials;
- ◆ partnership change recommendations to the existing A/C law adopted by the Presidential Committee against Organized Crime and Corruption;
- ◆ a series of A/C TV talk shows produced between January and July 2000;
- ◆ several roundtable discussions for mayors, business people, government officials, and citizens conducted to enhance awareness of the costs of corruption and the benefits of streamlined procedures; and
- ◆ improved local enforcement procedures assisted by regional partnerships.

Box 9.3. USAID/Albania Civil Society Reduction Corruption Project

The USAID/Albania Civil Society Reduction Corruption Project provides technical assistance, training and grant support to aid Albanian civil society, private sector, and government in reducing corruption.

Project Objectives

The program is working to

- ◆ Increase the awareness of Albanian society regarding the causes and costs of corruption and to transform that awareness into advocacy for reforms.
- ◆ Engage civil society, business and government together in a non-adversarial partnership to take action to manage their common problem.
- ◆ Work at the national level as well as at the local level, if practical, to support the implementation of positive reforms.
- ◆ Engage policy makers in a dialogue on the impact of already identified, and possible future, reforms.
- ◆ Monitor the progress of the Government of Albania (GoA) in implementing its program to combat corruption
- ◆ Identify and support private sector measures to reduce corruption.
- ◆ Develop a similar public-private dialogue with local policy makers and implementing authorities.

Approach

The project supports the formation of an Albanian-led coalition of civil society organizations (including business and the mass media) focused on the problem of corruption, the development of a civil society action plan, promotion of a public-private partnership to deal with the problem in a cooperative and nonconfrontational way, and continuing assistance in the implementation of A/C initiatives.

Anticipated Results

The project anticipates the development of a strong Albanian public-private partnership to reduce corruption in Albania and increase transparency, accountability and integrity in government as well as nongovernment activities.

Towards these objectives, USAID/Albania and its implementing partner has facilitated the establishment of the Albanian Coalition Against Corruption (ACAC). The coalition's membership includes over 100 Albanian and foreign businesses, business associations, media and NGOs, and has drafted and approved an action plan to reduce public corruption in the following sectors: taxation and customs; procurement, privatization and property; budget and legislative process; public services delivery; and judicial reform. The Coalition works cooperatively with central government ministries to coordinate A/C activities.

Other project initiatives carried out have included monthly forums on topics ranging from judiciary reform to the importance of the freedom of information; public outreach through the production of television advertisements, full-length radio and television programs; public debates; study tour to Bulgaria in which Albanian A/C advocates studied the successes of Bulgarian judicial watchdogs; and municipal pilot project for prevention of corruption in the municipalities of Elbasan and Vlorë. A small grants program was launched to support local initiatives to promote governmental integrity.

Through the small grants program fund, USAID/Albania has supported a legal clinic to assist victims of corruption. These services currently provide free legal advice to citizens about their rights related to alleged corruption and excessive bureaucracy. The program provides legal expertise on government agency filing procedures necessary to request formal investigation, and provides legal support in court to victims of corrupt practice.

USAID/Armenia may find these examples useful in developing its own stand-alone A/C activity. The mission might choose to develop a stand-alone activity housed in the DSRO as a component within a ROL program or separately. In this case the DSRO stand-alone A/C activity would provide a focal point for implementing discreet A/C activities and DSRO would be a principle locus of responsibility for their management. Alternatively, the mission might choose to house the stand-alone A/C activity separately from the current technical offices in the Program Office or

the front office directly, as the optimal framework for full management integration of A/C elements in the entire range of both technical offices.

The following elements are illustrative of A/C functions, activities and tasks that may be integrated to form a core component of either a separate A/C or a combined rule of law/A/C activity. Taken together, these elements would form an A/C approach that is comprehensive, evidence based, participatory and results oriented. The objective of this activity is “to combat corruption and promote transparency and accountability in targeted public and private sector institutions and transactions.”

9.5.1 Leadership and Coordination

- Provide leadership and support USAID Mission senior management and staff, US Embassy and USAID implementing partners in raising the profile and placing greater emphasis on combating corruption and increasing transparency and accountability throughout the USG assistance portfolio.
- Contribute to OSCE-led donor A/C coordination efforts.
- Convene a dialogue among the principal GOAM, donor and civil society representatives. Using the aegis of the USG, emphasize bringing new participants into these discussions and devising ways to structure them for more effective communication. Organize meetings to increase the interaction, overcome mistrust, and develop a transparent and effective working relationship among state, donor and civil society representatives.
- Monitor and encourage Armenia’s accession to international conventions on corruption such as the OECD Anti-Bribery Convention and the CoE civil and criminal law conventions on corruption.

9.5.2 Focal Point and Locus of USAID/Armenia Expertise

- Function as USAID/Armenia’s focal point and locus of the mission’s A/C expertise in relation to counterparts, implementing partners and other donors. Provide all USAID mission offices with in-house consultant/expert services on combating corruption and increasing transparency and accountability.
- Provide USAID/Armenia DSRO and EREO implementers, grantees and NGOs access to the analysis and recommendations produced by the Anti-Corruption Experts Group relevant to the implementation of specific activities. Establish a mechanism for discussing and receiving comments and suggestions from technical experts in areas included in the Final Report, such as Tax Policy and Administration; Customs Policy and Administration; Protection of Property Rights and Problems of Post-Privatization; Registration, Licenses and Permits; Competition Policy; Business Services (Accounting, Auditing, Legal); Financial Markets; Public Finance; State Procurement, Energy and Natural Resources; Legislation and Regulatory Environment; the Judiciary; Public Service; Education; Health; Public Governance; Political System and Elections; Local Governance; Civil Society; and E-governance.

9.5.3 Public-Private Partnership to Combat Corruption

- Promote development of a coalition of business and professional associations to participate with GOAM and A/C advocacy NGOs as part of a national initiative to enhance the competitive image and brand of Armenia in the international community and global marketplace.
- Foster the development of an open, inclusive and transparent process for preparation of A/C-related legislation.

9.5.4 Monitoring of Anti-Corruption Strategy Development and Implementation

- Monitor GOAM commitment to and endorsement of the Final Report of the Anti-Corruption Experts Group.
- Within the framework contemplated by the Anti-Corruption Experts Group, or drafters of a national A/C strategy or action plan, promote an open, inclusive and participatory public-private partnership that includes broad membership of GOAM representatives and experts, the media, academics, and business and professional associations, to monitor implementation of a national A/C strategy. Support the coalition of A/C NGOs led by TI/Armenia to foster NGO participation with GOAM in implementation and monitoring of the strategy and related action plan.
- Support GOAM and civil society efforts to monitor the transparency and accountability of the A/C secretariat, agency or other body responsible for implementation of the Anti-Corruption Strategy if established.

9.5.5 Support to Strengthen Civil Society Organizations

- Support implementing partners in their efforts to develop and strengthen the civil society organizations most critical in the fight against corruption, including citizen advocacy groups, citizen education groups, voter education and election monitoring groups, business and professional associations, investigative journalists, self-governing organizations such as condominium associations and local action committees.
- Support efforts to develop Third Sector leadership and build effective NGO coalitions.

9.5.6 Corruption Awareness, Research and Analysis

- Support initiatives to monitor implementation of the national A/C strategy and action plan through periodic opinion polls and survey research on changing perceptions of corruption.
- Promote awareness of the results of diagnostic surveys and reports with a view to decreasing tolerance for corruption and identifying pathways to change. Design, and implement public education activities aimed at decreasing the public's tolerance for corruption in specific, targeted sectors that most impact ordinary citizens and where entry points can be forged.
- Identify local policy research and analysis organizations to conduct further research on the causes, patterns and costs of corruption prevalent in Armenia.

- Work with think tanks, NGOs, focus groups of victims of corruption and others to diagnose, assess and document the nature, forms, patterns, extent and costs of administrative corruption and state capture in specific institutions and localities. This includes unbundling corruption at the national, regional and local levels as well as within specific sectors such as health, education, energy, tax, customs, and the judiciary. Emphasize the dissemination of research results and the development of concrete evidence-based, actionable policy recommendations.

9.5.7 Anti-Corruption Training

Identify training needs, guide development of training plans and identify candidates that are potential champions for strengthening integrity systems and increasing transparency and accountability in state and civil society institutions.

9.5.8 Grants

Implement specific A/C activities through funding of small grants targeted for “quick response” activities, new entry points, emerging islands of integrity, and similar opportunities for combating corruption and promoting transparency and accountability.

9.6 Integrate Anti-Corruption Elements in Mission Portfolio

9.6.1 Why Integrate Anti-Corruption Across the Mission Portfolio?

Introduction

Is anti-corruption a topic that merits only the attention, time and financial resources of USAID/Armenia/DSRO?

Without reservation, the assessment team has answered, “No.”

Corruption in Armenia is a crosscutting constraint adversely affecting realization of democracy and governance, ROL, social transition, energy and economic growth reforms. No sector supported by USAID programming is left untouched by corruption. Throughout Armenia, the burdens of corruption are felt in every DSRO and EREO sector. Consequently, EREO as well as DSRO management and financial resources should be allocated and applied explicitly and fully to the twin issues of corruption and anti-corruption.

After a decade into a difficult and uneven transition, corruption has emerged as a key development concern constraining the further democratic, economic and social development of Armenia. Left unchecked, corruption in Armenia can thwart US and European interests in promoting regional stability, the rule of law, and integration of Armenia into the larger international community and global marketplace. Economic growth, the reduction of poverty, political stability, and other US national interests in the region such as market access and the development of hospitable environments for domestic as well as foreign direct investment, plea for USAID technical assistance and persistence in combating corruption, promoting transparency and accountability, and building systems of integrity in USAID’s portfolio of activities.

USAID/Armenia asked the assessment team to recommend whether the Mission should consider a new stand-alone A/C activity or whether it should integrate A/C across the Mission's DSRO and EREO portfolios, or do both. To achieve the synergy that only the two complementary approaches can achieve, the assessment team recommended both in its debriefings in Yerevan and Washington. A stand-alone activity will provide focus, concentration of resources, coordination and a programmatic home, while an integrated approach will add breadth and depth, sector by sector. Again, this comprehensive approach calls for adequate funding and human resources to be made available to each responsible Mission unit.

The Challenge and the Opportunity

Section 8 of this report observes that there is no single model for designing and implementing a stand-alone A/C activity. Integrating A/C Mission-wide is a field less ploughed. At the strategy level, USAID Missions in the region such as Croatia, Bulgaria, Serbia and Kosovo have addressed corruption as a crosscutting issue by weaving themes such as transparency, accountability, awareness, prevention and enforcement into draft and final country strategies. As USAID/Armenia prepares its Country Strategic Plan for FY 2004-2008, it can refer to these printed resources and call upon the Anti-Corruption Working Group of the Europe and Eurasia (E&E) Bureau in Washington for technical assistance.

At the operational level, for those who must sit down and map out specific plans for integrating A/C across the Mission's entire portfolio, there are no known field-tested, "model" programs, written guidelines or rich lessons learned to draw on. This is largely uncharted territory. However, for the reasons stated previously, the opportunity to integrate A/C across the Mission's portfolio merits taking on the challenge. In the absence of a detailed map, the assessment team provides a suggested approach and some guideposts in this section. The Anti-Corruption Working Group of the E&E Bureau is on call to provide additional technical assistance.

9.6.2 Mission Vision, Management and Organizational Roles and Responsibilities

Senior Management: Its Vision and Role

The first priority is for USAID/Armenia senior Mission management to decide and then articulate to the Program Office, DSRO and EREO that at both the strategic and activity levels, the Mission intends to address corruption by integrating A/C interventions more explicitly, systematically and comprehensively into all DSRO and EREO activities. The nature and degree of integration will necessarily vary from activity to activity, but the theme and thrust must remain clear and constant: USAID/Armenia intends to take a ground-breaking role in integrating A/C measures Mission-wide.

Management responsibility for integrating A/C as a FY 2004-2008 strategic initiative will cut across all Mission offices, and will involve the Mission Director, the Deputy Director, the Program Office as well as both technical offices. Senior Mission managers play a critical role in providing strategic guidance and leadership, due to their considerable scope for raising awareness of corruption issues and promoting greater transparency and accountability in the reform process in their contacts and policy dialogue with high-level official counterparts and influential persons outside of government such as the Diaspora.

Senior Mission management also has regular contact with other elements of the US Embassy Country Team as well as the international donor community. Senior management can provide effective substantive leadership to the overall donor effort to fight corruption by raising awareness, improving policy coordination and proposing concrete measures for joint support.

Senior Mission management is particularly well positioned to seek the inclusion of transparency and accountability enhancing features in two types of situations and instruments. Every MOU with an Armenian government counterpart presents an A/C opportunity. USAID/Armenia can turn its MOUs into effective contracts for greater transparency and accountability by including contract clauses that commit counterparts to specific improvements in transparency and accountability. These could include, for example, requirements to publish, release and provide access to designated types of information within the scope of activities related to USAID technical assistance. Other requirements for transparency could include more open, participatory processes before the counterpart drafts or implements new laws, regulations, procedures or forms or takes other material actions that impact stakeholders who should be involved before the fact rather than merely after the fact. In the case of accountability, MOUs should not be silent on such accountability-enhancing mechanisms as third-party participation, monitoring, oversight and auditing tailored to the specific sphere of activity covered by the Memorandum of Understanding (MOU). In short, the modest price paid by Armenian counterparts for USAID assistance should be written commitments and concrete actions that lead to greater transparency and accountability.

Similarly, senior Mission management is well positioned to seek the inclusion of transparency- and accountability-enhancing conditions in those World Bank and other donor loans and grants that contemplate USAID technical assistance aimed at helping Armenian counterparts achieve compliance with conditionalities. Mission management has the opportunity to convey the message that it is not inclined to offer the specific technical assistance that other donors typically ask USAID to provide unless it first sees specific transparency and accountability conditionalities included in the loan and grant agreements.

Moreover, senior Mission management is well positioned to speak out whenever other international donors as well as other USG agencies may be inclined to waive, overlook or trade off host country compliance with transparency- and accountability-enhancing conditions. The assessment team heard firsthand accounts of situations in which donors were inclined to defer host country compliance with conditions precedent due to “overriding” political, economic and project objectives and related internal and external pressures and incentives to disburse funds and provide technical assistance now rather than later. Mission management can be a voice in the international community for fulfillment of transparency and accountability pre-conditions first, dollars and technical assistance to follow. Finally, too much credible information about the nature and extent of grand corruption is kept within the walls of international finance institutions, other embassies, the offices of the US Country Team, and the field offices of USAID implementing partners. Senior Mission management can be a voice for timely and full disclosure of what is known about the nature, extent and locus of corruption in Armenia, especially corruption far above the level of traffic police and minor bureaucrats.

The approach advocated in the preceding paragraphs can advance donor coordination from one focused on exchanging project information and allocation of sector responsibilities, to one founded on the integrity enhancing and donor coordinating themes of transparency and accountability.

Program Office, DSRO and EREO: Roles and Responsibilities

Once approved, the USAID/Armenia FY 2004-2008 strategy will guide development of new activities and reorient ongoing ones. USAID/Armenia will have the opportunity to request proposals from implementers who demonstrate a high degree of knowledge of corruption issues and who can propose explicit activities to address them. Program Office, DSRO and EREO reviews of RFPs and other acquisition and assistance instruments will ensure proper A/C emphasis and priority attention across the portfolio.

Considerable effort will need to be devoted to completing the unfinished agenda of reforms in Armenia, which if “fine-tuned” or targeted for greater emphasis on specific issues of transparency and accountability will also advance the A/C agenda. Any measures aimed at reducing monopoly power of particular government institutions and public officials, reducing procedural complexity, curbing official discretion, increasing transparency in resource allocation, eliminating conflict of interest and nepotism, promoting dissemination of and access to information, public participation and oversight, external monitoring and auditing all fall into this category.

Likewise, general strengthening of civil society institutions and broad support for NGOs, capacity building in local government and the justice sector, and rationalizing public expenditures on social services, will help to reduce corruption. At the same time each of these discrete USAID activities would be qualitatively improved by including specifically targeted A/C measures designed to specifically raise standards of transparency and accountability.

The Program Office has an important role to play in its interactions with DSRO and EREO. In particular, at the time of design of new activities and in participating in portfolio reviews, the Program Office can help assure that corruption is indeed being adequately addressed. This office can monitor program development in a manner consistent with the A/C themes of the FY 2004-2008 Country Strategic Plan and the vision and message of senior Mission management—that A/C interventions are to be integrated explicitly, systematically and comprehensively into all DSRO and EREO activities—and that these measures are adequately budgeted and appropriately designed.

DSRO and EREO personnel have essential and complementary roles to play in carrying out the vision articulated by senior Mission management. At the activity design, implementation, monitoring and evaluation phases, DSRO and EREO personnel are charged with the responsibility of integrating A/C into their respective portfolios, activity by activity. In carrying out this role, DSRO and EREO personnel must assist, insist and ensure that implementers ‘weave in’ the most appropriate technical and policy interventions critical to success in combating corruption and promoting integrity in democracy and governance, rule of law, social transition, energy and economic growth activities. On a day-to-day basis, DSRO and EREO personnel are

best positioned to keep A/C in the foreground of what USAID/Armenia implementing partners are actually doing in the field. Mission management must ensure they are given adequate recognition, reward, guidance, support and budgetary resources to do the job.

9.6.3 Using Transparency – Accountability – Awareness – Prevention – Enforcement (T A A P E) to Integrate Anti-Corruption into Mission Activities

The T A A P E strategic approach to combating corruption developed by the Anti-Corruption Working Group of the E&E Bureau can be used as a general starting point for integrating A/C across USAID/Armenia’s entire portfolio (see the May 2002 draft of “A Strategic Approach to Combating Corruption in Europe and Eurasia”). This holistic framework recognizes five complementary types of interventions—those supporting Transparency, Accountability, Awareness, Prevention and Enforcement—within the entire range of programs and activities implementing USAID’s strategic objectives. To successfully combat corruption and promote integrity, the T A A P E framework calls for USAID—acting in concert with host country governmental and nongovernmental organizations and other US government agencies and international donors—to design and implement interventions supporting these five attributes to counter the perverse incentives, institutional imperfections and conditions that foster the emergence and spread of corruption.

Because corruption is a cross-cutting issue that affects all sectors, T A A P E aspects can be integrated into assistance activities regardless of the strategic area. The T A A P E strategic approach can be used to identify and thread attributes and reforms into individual activity designs to assure that any given DSRO or EREO activity or task will support the development of institutions and practices that are less subject to becoming corrupt and, depending on the activity, also have the potential to counter corruption. Second, T A A P E can be used to focus on reducing corruption within a particular institution critical to the successful implementation of EREO reforms. Third, it may be appropriate in some instances to emphasize one or more aspects of T A A P E—such as Transparency and Accountability—throughout the implementation of all EREO activities and tasks—whether the core activity is energy, fiscal reform, bank supervision, non-bank financial institutions, capital markets, commercial law, competitiveness, small- and medium-sized enterprise (SMEs) or agribusiness development.

9.6.4 Using T A A P E to Integrate Anti-Corruption into DSRO and EREO Activities

In Section 8, the assessment team suggests to USAID/Armenia that it give serious consideration to implementing a stand-alone A/C activity. The team suggests that DSRO is a possible programmatic home for a stand-alone initiative and that one might possibly nest it within a broader ROL activity, if there is an issue about proliferating DSRO management units. In this section, the assessment team shows how T A A P E can be used as a framework for integrating A/C across all Mission activities, both in DSRO and EREO.

9.6.5. T A A P E at the Sector Level: Diagnostic Information

The T A A P E strategic framework calls for thorough diagnosis of corruption before attempting to design prescriptions to cure it. Corruption is a multidimensional phenomenon (e.g., grand

corruption comes in various forms as does administrative corruption; the six forms of World Bank-defined “state capture” do not embrace all forms of perverse public-private sector political and economic relationships). Consequently, as a collection of diseases, corruption needs to be unbundled through thorough diagnosis in order to formulate tailored interventions appropriate to the forms identified taking into account their manifestations, loci and effects.

In cooperation with other donors, USAID/Armenia and its implementing partners should ascertain what is known, not known and what needs to be known about corruption in each DSRO and EREO sector. This includes sector analyses of the various forms, patterns and networks of grand corruption and administrative corruption encountered in each sector. This diagnostic work should be undertaken with a view to advance understanding of the vulnerabilities of institutions to risks of corruption and the extent to which donor-supported projects can effectively dissect and redress the most material risks. Moreover, this analysis should confront candidly the types of grand corruption and administrative corruption not susceptible to technical fixes typically designed by DSRO or EREO technocrats.

To sum up, a strategic approach to combating corruption at the DSRO or EREO sector level begins with a rigorous diagnostic process that assesses:

- (1) the forms, patterns, extent and effects of corruption specific to the sector;
- (2) the perverse incentives and other factors that drive the various forms of corruption identified;
- (3) the conditions within the sector and within particular institutions that put the sector and its key institutions “at risk” for corruption;
- (4) who in the public and private sectors benefit from sector-specific corrupt practices;
- (5) who in the public and private sectors lose from specific corrupt practices;
- (6) the location and degree of political will for reforms;
- (7) who in the public and private sectors may oppose reforms (in addition to those who benefit directly from corruption) and the reasons for resistance (e.g., loss of jurisdiction, turf, budget, personnel, status, authority and influence);
- (8) the political, technical and financial constraints that must be overcome to implement reforms and the associated tradeoffs;
- (9) likely entry points and levers for initiating change; and
- (10) the amount of leverage and political will USAID and other donors have and are willing to expend to induce and support change.

9.6.6 T A A P E at the Activity Level

It is beyond the scope of this assessment to provide the Mission with detailed recommendations at the activity level for weaving A/C elements into existing or planned DSRO and EREO activities, activity by activity. This is another step further downstream in the strategic planning process. Moreover, the preferred approach for developing meaningful A/C activities is to involve the implementers and other stakeholders from the start. This should begin with a painstaking process of discussion within Strategic Objective teams and among implementing partners, once a general level of understanding about corruption has been achieved and a common vocabulary is in use.

What follows is a suggested process for utilizing the information contained in this assessment report and some next steps to take in developing USAID/Armenia's A/C initiative. It has already been noted that while there is experience in the E&E region with ad-hoc A/C approaches and stand-alone activities, there are no models for the fully comprehensive approach recommended here. USAID/Armenia will be a pioneer in the region by implementing a Mission-wide approach to integrating A/C across its entire portfolio.

1. **Start with an education process internally.** In connection with the completion of the ROL-A/C assessment it would be useful to hold a seminar or workshop for USAID staff. The first purpose would be to review and discuss the findings. But this opportunity can also serve to continue an important educational process begun during the team's visit. It would serve to further familiarize staff with the T A A P E framework and its underpinning literature on corruption, to develop a fuller understanding of the conceptual and theoretical basis for A/C measures, and to apply this knowledge to the specific conditions in Armenia. It is important for the process of "integration" across Mission technical units that there be common understanding of the key terms and concepts used in designing and implementing A/C programs. This is also an opportunity to make all staff aware of the considerable number of relevant information resources available from the UN, World Bank, think tanks and academics to inform Mission thinking and activities. During the assessment team's visit, USAID/Armenia staff demonstrated a keen professional interest in the problem of corruption and A/C solutions. It would be useful to build on this interest by providing opportunities for additional professional development in an area that has garnered widespread attention within and outside USAID.
2. **Extend this process to include USAID implementing partners.** The contractors and grantees interviewed during the assessment team's visit were similarly interested in the Mission's A/C strategy and many were highly energized to approach the topic more in-depth than was possible in the time frame of the assessment. They also provided a wealth of experience and insight into the day-to-day issues and problems of lack of transparency and accountability that impeded the achievement of their work objectives. It would be very helpful to support the Mission's A/C strategy by extending the educational process described above to the entire range of USAID's implementing partners operating in Armenia. This process was begun on an informal basis during the assessment team's visit, but structured seminars or workshops would provide much greater opportunity for the partners to further explore and analyze their own experiences to develop their ideas on technical solutions to a greater degree than previously possible.
3. **Use expanded Strategic Objective Teams to brainstorm A/C approaches for each activity, one by one.** USAID staff and contractors need to achieve a uniform and in-depth understanding of the complex problems of corruption, and become familiar with the various schools of thought about how to combat corruption and promote integrity in various sectors. Once this level of understanding is achieved, the Mission's Strategic Objective Teams will more fruitfully engage in brainstorming, and can productively undertake their own analysis to design, implement and evaluate new or adapted activities. This step is key to successfully following up on the ROL-A/C assessment and making the recommendations actionable. The knowledge and experience of Mission officers and managers, combined with the knowledge

and experience of USAID's implementing partners and their Armenian counterparts, both governmental and nongovernmental, taken together form the most significant resource the Mission has available for designing effective measures for weaving A/C into the program. This critical step, mining the existing personnel resources, involves a painstaking process of examining USAID objectives, in the context of the known corruption that impedes their achievement, and developing remedies that are linked to USAID's available resources for planned and ongoing activities. This step forms the foundation of the Mission's comprehensive A/C initiative.

4. **Build anti-corruption measures into scopes of work and other documentation.** To integrate A/C in the full extent of DSRO and EREO sectors, Armenia's FY 2004-2008 country strategy and every statement of work, RFPs, Request for Applications (RFAs), contract, grant, cooperative agreement, work plan, conference, workshop and study tour should specifically address corruption with A/C interventions.

Box 9.4 presented below presents an illustrative generic framework for integrating A/C into the design of an EREO activity. It does not purport to be a standard or model set of contract clauses. Adaptation is called for—an energy sector reform activity is not equivalent to an SME activity. A further cautionary statement is in order. In some cases, an implementing partner may not be able to perform directly or indirectly the diagnostic or prescriptive tasks outlined below. The reasons are several, including limited expertise, capacity or experience. Moreover, working with counterparts effectively requires development of a relationship founded on mutual respect and trust. Implementers of technical fixes to dysfunctional systems may not be able to perform tasks in the name of A/C without impairing their ability to achieve tasks related to improving the economy, efficiency and effectiveness of institutions. Often, the most effective way to prevent and deter corruption is to achieve that result as an intended, but unspoken, by-product derived from the performance of other tasks. Experience teaches that some of the most effective A/C interventions do not go by that name. Accentuating the positive by promoting model standards of institutional and individual behavior may be less threatening, better received and more effective than emphasizing elimination of “corrupt” behavior directly.

USAID/Washington has not defined for USAID field missions what democracy and governance, ROL, social transaction, energy and economic activities are inherently, primarily or secondarily “anti-corruption” activities for budgetary or other reporting purposes. Nor have activities that are so tertiary or remote as to fall outside of the breadth of any A/C reporting umbrella similarly been identified. Inspired by the T A A P E strategic framework, the following abbreviated checklist is intended to help USAID/Armenia evaluate, through an A/C lens, the extent to which A/C is explicitly, systematically and comprehensively integrated into the design and implementation of Mission activities.

Box 9.4. Sample "For Discussion" Clauses for Integrating Anti-Corruption into EREO Activities

Diagnostic Tasks. The Contractor shall diagnose and assess the nature, extent, patterns, causes and effects of the various forms of corruption encountered in the sector (e.g., the most pernicious forms of "grand corruption" and "administrative corruption" encountered). This assessment should contribute to increased understanding of the patterns of corruption in the sector and how they impact businesses and other stakeholders and undermine the integrity, efficiency and effectiveness of the institutions operating in the sector. In diagnosing the incentives and corruption-inducing factors that explain the persistence of corruption in the sector, the Contractor should identify the risk factors that give rise to the particular forms of corruption encountered. This micro-analytic diagnostic work should complement and build on, but not duplicate, the macro corruption assessment surveys of organizations such as the World Bank and local Armenian NGOs. This task may be performed by the Contractor directly or through the services of one or more subcontractors (or grantees).

Prescriptive Interventions. Based on the results of sound diagnostic work and in consultation with USAID/Armenia, the Contractor shall formulate and integrate to the extent practical, appropriate A/C interventions (such as those suggested by the T A A P E strategic framework) into the activities associated with the performance of each task specified herein. This prescriptive and implementation work should address the specific risk factors associated with the existence of the particular forms of corruption encountered in the sector.

Integration of A/C Interventions with Other Tasks. In performing the specific tasks enumerated herein, the Contractor shall incorporate into the reports, work plans, activities and other deliverables specified below (Tangible Results and Benchmarks), specific information that evinces integration of diagnostic and prescriptive A/C interventions. The results reported by the Contractor should demonstrate performance of the diagnostic and prescriptive approach to A/C contemplated by the preceding sections.

An Abbreviated Checklist for Integrating T A A P E Anti-Corruption Interventions into DSRO and EREO Activities: 20 Questions

Diagnosis: Use of Macro-Surveys and Micro-Analytics

1. To what extent does the activity utilize third party (e.g., World Bank, European Bank for Reconstruction and Development [EBRD], Transparency International, Freedom House, SELDI, International Crisis Group, local NGOs) macro-surveys, indicators and assessments of corruption within the country to identify macro-level and sectoral problems, target areas and reform priorities?
2. To what extent does the activity use rigorous micro-analytic techniques to assess at the sectoral and institutional level:
 - a. the forms, patterns, extent and effects of corruption in the sector and within key institutions;
 - b. the perverse incentives and other factors that drive the various forms of corruption identified;
 - c. the conditions within the sector and within particular institutions that put the sector and its key institutions "at risk" for corruption;
 - d. who in the public and private sectors benefit from sector-specific corrupt practices;
 - e. who in the public and private sectors lose from specific corrupt practices;
 - f. the location and degree of political will for reforms;

- g. who in the public and private sectors may oppose reforms (in addition to those who benefit directly from corruption) and the reasons for resistance (e.g., loss of jurisdiction, turf, budget, personnel, status, authority, and influence);
- h. the political, technical and financial constraints that must be overcome to implement reforms and the associated tradeoffs;
- i. likely entry points and levers for initiating change in the sector and within key institutions; and
- j. the amount of leverage and political will USAID and other donors have and are willing to expend to induce and support sectoral and institutional change?

Transparency

- 3. To what extent does the activity promote transparency in the dissemination of and access to reliable, useful and sufficient information about public sector institutions such as material information concerning their legal, organizational and operational frameworks; budgets and use of resources; material decisions made and actions taken; and quality of performance?
- 4. To what extent does the activity promote transparency in the open, inclusive and participatory governmental institutions and processes in which interested stakeholders are afforded the opportunity to be heard and influence the outcome of decisions that affect their legitimate interests and the public interest?
- 5. To what extent does the activity promote transparency in the disclosure by public officials of their private sector financial interests and potential and actual conflicts of interests?
- 6. In the context of corporate governance, public procurement, and public-private sector relationships, to what extent does the activity promote transparency in the legal and institutional framework that ensures timely and accurate disclosure of material information regarding business enterprises, their financial condition, performance, ownership, governance, government contracts and relationships with public sector institutions and officials?

Accountability

- 7. To what extent does the activity assess and strengthen the institutions and mechanisms of horizontal accountability in the sector and within and over key institutions?
- 8. To what extent does the activity assess and strengthen the institutions and mechanisms of vertical accountability in the sector and within and over key institutions?
- 9. To what extent does the activity measure and enhance such indicia of accountability as the three Es of Economy, Efficiency, and Effectiveness?
- 10. To what extent does the activity reinforce the duty of public institutions and public officials to account to the public and specific groups of stakeholders and intended beneficiaries for use and allocation of the public goods and resources subject to their management, disposition and control?

Awareness/Education/Values

11. To what extent does the activity heighten public awareness of:
 - a. the nature, extent, forms, causes, costs and adverse consequences of corruption;
 - b. the tangible benefits of specific reforms;
 - c. the opportunities for change; and
 - d. the progress or lack of progress in combating corruption and promoting integrity in the sector and within key institutions?
12. To what extent does the activity promote public participation in developing, advocating, implementing, and monitoring sectoral and key institutional reform agendas and action plans?
13. To what extent does the activity promote educational, training and related interventions that lead to the identification, socialization and institutionalization of public sector values, professional values, and societal values and related standards of ethical conduct that advance integrity and decrease tolerance for corruption?

Prevention

14. To what extent does the activity promote systemic reform, reengineering, restructuring, and right sizing of institutions by introducing positive models of institutional and individual behavior that displace their dysfunctional, corrupt opposites?
15. In the context of preventing new opportunities for corruption, to what extent does the activity advance the principle of “First, Do No Harm” at the time of proposing and implementing legal, regulatory and institutional changes?
16. To what extent does the activity identify and eliminate perverse incentives and otherwise realign incentives of public officials with their principles through such interventions as civil service and fiscal reforms that facilitate “meritocracies” founded on competition, merit, and living wages rather than nepotism and patronage relationships and networks founded on bribes, unofficial payments and trading of illicit benefits?
17. To what extent does the activity decrease opportunities for corruption by:
 - a. decreasing the monopoly power of institutions and officials (over allocation of licenses, permits and other public benefits and over other material decisions and transactions)—through interventions that eliminate unilateral decision making and promote competition and choice; and
 - b. curbing the unfettered discretion of public officials—through interventions that eliminate arbitrary, subjective, ambiguous and otherwise opaque rules of the game with transparent and objective ones?

Enforcement

18. To what extent does the activity alter incentives, increase the probability of detection of illicit transactions, and deter corruption by changing the cost/benefit ratio thereby making rent-seeking substantially more risky, costly and less beneficial?
19. To what extent does the activity promote more effective enforcement of laws and implementing regulations by changing incentives through promotion of such interventions as simplification and clarification of legal frameworks; closing gaps in the legal framework; creating self-enforcing mechanisms, improving self-regulatory organizations; promoting use of administrative fora, private dispute resolution institutions (Alternative Dispute Resolution), and specialized courts; and furthering justice sector reforms?
20. To what extent does the activity promote reforms that change incentives, promote core values, and begin to build a culture of compliance with the legal and regulatory framework by public sector actors (institutions and public officials) and private sector actors (businesses, NGOs and citizens)?

9.6.7 Link Rule of Law/Anti-Corruption to Country Competitiveness Strategic Theme

More Armenians must come to understand and believe that corruption is not just a cost of doing business or a benign supplement to the wages of low paid public servants. Nor is the fight against corruption the sole province of law enforcement. As discussed above, state capture and systemic administrative corruption stymie foreign and domestic investment, misallocate public resources, benefit the political and economic elite while taxing the poor disproportionately, undermine public institutions' ability to deliver social services, thwart the ROL, and increase public cynicism and mistrust of government.

Armenia's perverse public-private sector relationships and weak, opaque and unaccountable institutions are twin enemies of the country's ability to raise standards of living or sustain future economic gains. Not only are they threats to Armenia's external (and internal) reputation, and deter investments in its future growth and stability; left unchecked, they hold the potential for reversing the modest gains made over the last decade.

USAID/Armenia's FY 2004-2008 assistance programs can and should play a key role in helping Armenians take a longer view of their future and form a more unified national vision for the country's development. Country competitiveness is a new prism through which to view Armenia's transition in the context of global trends and Twenty-First Century realities. US assistance must help the Armenian public and its leadership become aware of the important link between combating corruption and success in participating fully in the global economy. This objective should figure prominently in the USAID/Armenia's FY 2004-2008 Country Strategy and in USG/Armenia relations.

Annexes

Annex 1: Bibliography

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